



May 4, 2015

General Services Administration
Regulatory Secretariat Division (MVCB)
Attn: Ms. Hada Flowers
1800 F Street, N.W., 2nd Floor
Washington, D.C. 20405

Subject: GSAR Case 2013-G504 Transactional Data Reporting

Dear Ms. Flowers:

Thank you for the opportunity to provide comments on the above referenced proposed General Services Acquisition Regulation (GSAR).

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 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 for more than 35 years towards the mutual goal of common sense acquisition.

I. Summary of the Rule

The proposed rule would establish a new requirement for GSA contractors (IT GWAC contractors, Federal Supply Schedule (FSS) Schedule contractors and other GSA contract programs, as applicable) to report transactional data at the order and Blanket Purchase Agreement (BPA) level to GSA. The VA Schedules are exempted from the requirement. The transactional data to be reported includes the following:

1. Contract or BPA Number;

2. Order Number/Procurement Instrument Identifier (PIID);
3. Non Federal Entity, if applicable;
4. Description of Deliverable;
5. Manufacturer Name;
6. Manufacturer Part Number;
7. Unit Measure (each, hour, case, lot);
8. Quantity of Item Sold;
9. Universal Product Code (UPC), if applicable;
10. Price Paid per Unit; and
11. Total Price

The proposed rule retains the Price Reduction Clause (PRC) in GSA Schedule contracts, but deletes the requirement to monitor a basis of award customer for Schedule contractors required to report transaction data. The remainder of the PRC essentially remains in effect. FSS Schedule contractors still will be required to submit Commercial Sales Practices (CSP) information – along with a continuing requirement to provide updates throughout the life of the contract. In addition the rule makes clear that GSA can ask for FSS Schedule contract price reductions at any time.

GSA proposes to implement the rule with a pilot that will cover schedules for products and commoditized services.

II. GSA Objectives

GSA proposes this regulatory change in order to achieve the following objectives:

- A. Improve GSA's ability to conduct meaningful price analysis – decrease price variability.
- B. Validate fair and reasonable pricing on both its non-FSS and FSS vehicles more efficiently and effectively.
- C. Allow GSA's customers to improve their ability to compare prices prior to placing orders under GSA Contracts.

III. Summary of Coalition for Government Procurement Comments

The Coalition is opposed to adoption of the rule as drafted for the following reasons:

- A. The proposed rule is not reasonably constructed to achieve GSA's stated objectives.
- B. A system that continually drives down prices without regard to terms and conditions negatively impacts the supplier base, particularly small businesses, and ultimately the federal customer, and threatens to reduce competition and its associated benefits.
- C. The proposed rule imposes heavy tracking and reporting burdens on GSA schedule contractors and a high cost to government.
- D. The proposed rule does not adequately protect confidential commercial information.
- E. The proposed rule is insufficient to cover significant portions of the schedule program.
- F. Transactional data either already is in the government's possession or available from independent commercial sources.

GSA can more effectively achieve its goals using methods that are less costly for industry and the federal government. The Coalition recommends program changes and supports use of alternative pilot programs to achieve GSA's objectives.

IV. Detailed Comments

A. The proposed rule is not reasonably constructed to achieve GSA's stated objectives.

1. *The proposed rule fails to acknowledge the fundamental rationale for the Multiple Award Schedule (MAS) program, i.e.*
 - The program addresses the full panoply of federal needs for a broad range of commercial services and products.
 - Because technical requirements are not specified at the time of contracting, GSA does not have a valid basis for head to head contract level price competition.

These fundamental realities resulted in a MAS contract price evaluation methodology that is based on how an offeror sells to its commercial

customers, rather than head to head price competition. At the contract level there is simply no valid technical basis for such a “competitive” price comparison, except for the small percentage of cases where proposed MAS contracts involve *identical products*. Moreover, given the variations in agency specific technical requirements, order timing/delivery and volume commitments across hundreds of thousands of orders, the transactional data reporting required by the proposed rule does not provide a sound basis for price comparison/analysis. Ultimately, the rule requires contractors to collect and submit information that will not lead to meaningful price analysis and will not efficiently validate fair and reasonable pricing for GSA Schedule contracts.

2. FAR 15.404-1 provides guidelines for determining commercial prices fair and reasonable.

FAR 15.404-1(b)(ii) makes clear, price analysis using historical pricing data (i.e. transactional data) is a multi-faceted task where the variations in facts and circumstances underlying the data directly impact its relevancy and utility in making price comparisons. According to the FAR, the prior price paid must be a valid basis for comparison. For example, if there is a significant time lapse between acquisitions, if the terms and conditions differ significantly, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison. Further, the FAR directs that the prior price must be adjusted to account for materially different terms and conditions, quantities and market and economic factors. For similar items, contracting officers must also make adjustments to account for material differences between the similar item and the item being procured. See generally FAR 15.404-1(b)(ii).

A GSA or agency task order contracting officer will be unable to determine, based on the data received, whether the terms and conditions, the contract types, or market conditions are the same as the acquisition being evaluated. Also due to the length of the contract period (up to 20 years) it is unlikely that historical prices will be relevant. In sum, based on the data collected it is nearly impossible to make an “apples to apples” comparison between the data collected and the MAS contract or order being evaluated.

Both the Schedules and GWACs are general contracts with broad scopes that leave delivery, quantity, technical requirements to further definition by the customer agency at the task order level. It is difficult to envision a circumstance when (i) the price acquired on a specific requirement, (ii) for a definite volume or guaranteed commitment, (iii) to be performed at a specific location, would be a valid basis for comparing the price offered on a long-term, IDIQ contract such as the GSA Schedules and GWACs. Even at the task order level it is difficult to make a valid comparison as any similarities between the requirements would be purely coincidental.

Moreover, task and delivery order competition drive value and price under all multiple award type contracts, including the GSA Schedules. Rather than establishing a costly, burdensome transactional data requirement for contractors, GSA should look for means to increase task order competition across the program to support customer agency missions and promote sound business opportunities for contractors.

3. *At a minimum, any transactional pricing information collected by GSA should exclude the following data points because they are so dissimilar to GSA Schedule and GWAC contract level pricing:*

- a. Blanket Purchase Agreements (BPAs). Discounts offered on BPAs are negotiated with the understanding there will be some quantity of items purchased, unlike quantity one pricing negotiated on the base FSS contract. There are often other factors that contribute to the discounts anticipated on a BPA. The agreement made between an agency and contractor should be protected.
- b. Prices paid on cost type contracts. Pricing on these types of contracts is based upon approved DCAA pricing practices.
- c. Prices paid on Fixed Price type contracts. Prices paid on Fixed Price type contracts are not relevant, as the terms of such contracts/orders are definitized based on agency unique requirements.

4. Any data collection resulting from this rule should establish limits for the time frame in which data is to be reported by contractors and used by contracting officers for purposes of price evaluation.

For example, if a company currently has a contract with a 10-year period of performance and is in contract year 4, the contractor should not be required to report prices paid from inception-to-date. In essence, the rule should not be retroactive. Rather, the rule should set a date certain in the future when data is to be reported. It would be unrealistic for the contractor to include prices that are not current for the government contracting officer.

B. A system that continually drives down prices without regard to terms and conditions negatively impacts the supplier base, particularly small businesses and ultimately the federal customer.

The underlying concern across industry is that transactional data reporting and the prices paid portal will be used to drive contract level prices to the lowest reported point, regardless of terms and conditions, quantities, market and economic factors. A system that seeks to drive down pricing through constant comparison of individual transactions leads to a downward or death spiral in pricing that is inconsistent with the dynamics of the commercial market place. It is simply not sustainable over the long term for the Federal supply chain.

Such an approach may make for a short term “gain” or headline regarding savings by the government. However, such an approach will compromise the government’s long term, strategic interests in fostering competition, maintaining a strong and innovative supply chain, ensuring best value mission support and access to “priceless” commercial innovation. More importantly, the continual drive to low cost fails to acknowledge the great diversity of requirements across federal agencies. Some agency missions require complex products, from top performing contractors. The growth of federal requirements in the area of cyber security is an example of such a need. As GSA expands its suite of contract vehicles to address more complex requirements, in some cases the highest priced item may be the lowest cost and best value to accomplish the agency mission. A constant drive to the lowest price will eliminate these products and contractors from the GSA portfolio.

GSA has consistently stated that transactional data reporting will not be used to drive low price regardless negotiations. Industry reports, however, that throughout the FAS acquisition centers, horizontal pricing comparisons are being used to drive ever lower contract level pricing. Indeed, contractors are being told to lower their prices based on horizontal price comparisons to a set target price or delete the item from the contract. Based on the lack of progress in addressing this use of horizontal pricing, industry remains very concerned regarding the eventual use of transactional data to further suppress prices to unreasonably low contract levels.

C. The proposed rule imposes a heavy burden on GSA schedule contractors and a high cost to government

1. Transactional Data Survey

The Coalition conducted a survey of our member companies to assess the costs involved in implementing the Transactional Data Reporting proposed rule on GSA contractors. Respondents included small, medium and large businesses. These respondents hold both Federal Supply Schedule (FSS) and non-FSS contracts. 98% of the companies that responded are GSA Schedule contractors and 42% have government-wide acquisition contracts (GWACs) through GSA. Approximately one quarter of the companies that responded are small businesses.

The Transactional Data Reporting survey included questions about the initial startup costs to comply with the transactional data reporting requirement, the time it would take to conduct the reporting on a monthly basis, and whether the proposed rule would reduce the annual burden associated with GSA contract compliance as suggested in the proposed rule. Based on the survey results, GSA's estimates of the rule's burden on contractors are significantly understated. In fact, the Coalition's estimate of the cost burden of implementing transactional data reporting is *30 times* that in the proposed rule.

The following is an overview of the results of the survey and the burden of the proposed Transactional Data requirements provided by contractors.

2. Initial Setup

GSA contractors report, like the government, that transactional data is not readily available. Respondents to the survey overwhelmingly said that currently available commercial systems do not already collect the data points GSA is seeking in one place, or at all. As a result, in order to implement transactional data reporting on a monthly basis systems would either need to be built or existing systems would have to be customized to collect the information and consolidate it to report to GSA.

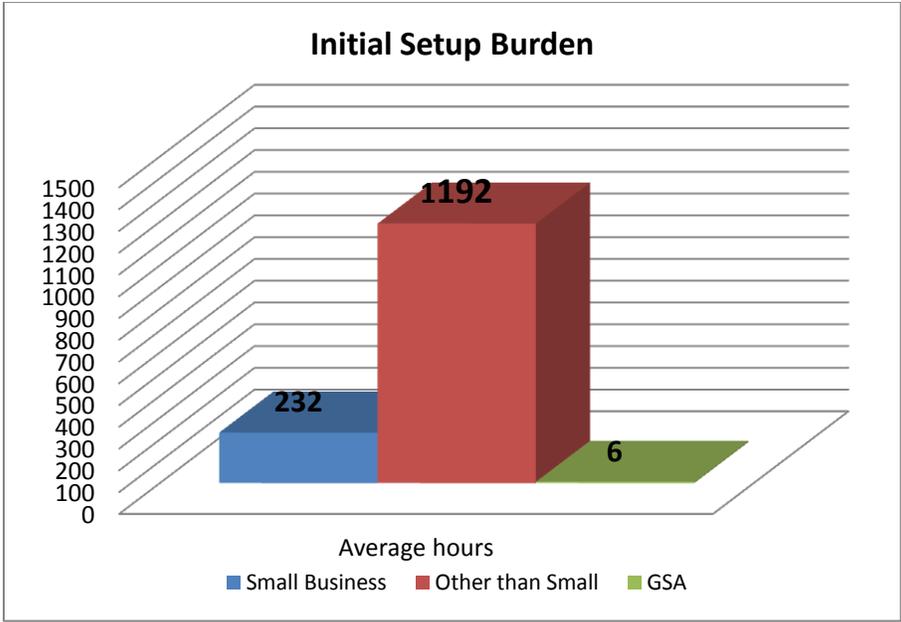
Initial startup activities necessary for contractors to comply with the proposed rule include:

- reading and understanding GSA requirements,
- creating or reprogramming systems capable of capturing and reporting the required data elements,
- establishing internal written protocols and procedures,
- receiving internal approvals,
- training company employees,
- collecting data,
- vetting and reconciling data, and
- negotiating terms with GSA

When asked about the estimated number of hours that their company would require for initial startup to comply with the proposed rule, small business respondents reported that it would take on average 232 hours. Large and medium size contractors estimated that it would take on average 1192 hours. In the context of an average work week, small businesses estimated that it would take nearly 6 weeks for initial setup, which would require limited resources to be diverted to this effort. Large and medium size businesses reported that it would take nearly 8 months on average to setup these systems. The proposed rule suggests that contractors should undertake this compliance burden at “no cost to the government.”

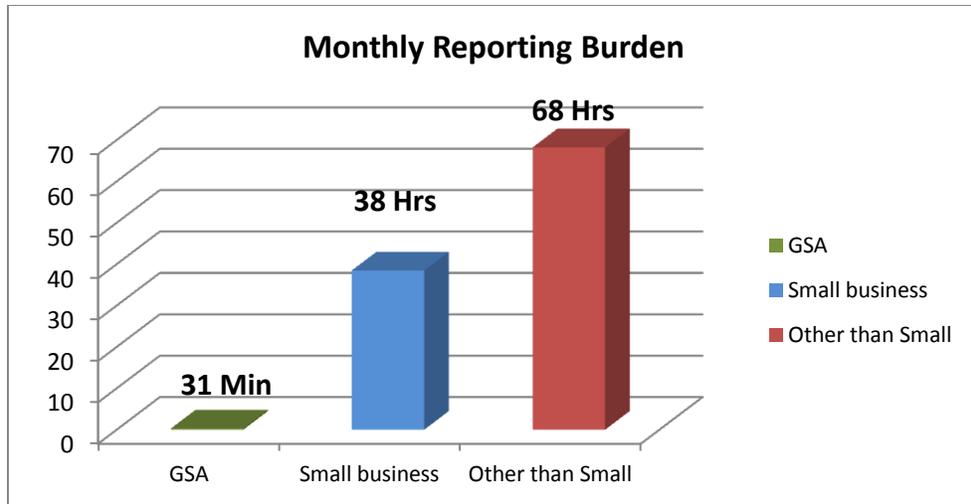
In both cases, the estimates provided by contractors of the one-time initial setup burden were *far greater* than GSA’s estimate of 6 hours (which covered time to review instructions, search existing data sources, gather and maintain the data needed, complete and review the collection of

information, training, compliance systems, negotiations, and audit preparation the new clause may require).



3. Reporting

In the survey contractors also report a significantly higher number of hours required to do the monthly transactional data reporting than estimated in the proposed rule. Respondents were asked in the survey to estimate the number of hours it would take their company to report the transactional data on a monthly basis. GSA estimated that it would only take 31 minutes per month. However, small businesses reported that it would take 38 hours per month on average. Large and medium size businesses estimated that it would take an average of 68 hours per month – nearly 2 weeks to conduct the reporting. Again, the proposed rule suggests that contractors should undertake this burden at no cost.



Given the amount of time required to conduct the reporting on a monthly basis, some contractors reported that additional personnel would be required to regularly perform this task.

4. PRC Burden

According to the proposed rule, contractors would experience a lesser compliance burden as a result of the rule. According to GSA the additional burden of the transactional data reporting would be offset by a reduced burden of the Price Reductions Clause (PRC) by removing the requirement to monitor Basis of Award (BOA) customers. However, as previously stated, the proposed change to the PRC does not reduce the compliance burden as the rule still allows the government the ability to ask a contractor for updates to the disclosures on its commercial sales format. As a result, this PRC burden does not go away – the transactional data rule actually increases the total administrative burden on contractors rather than reducing it.

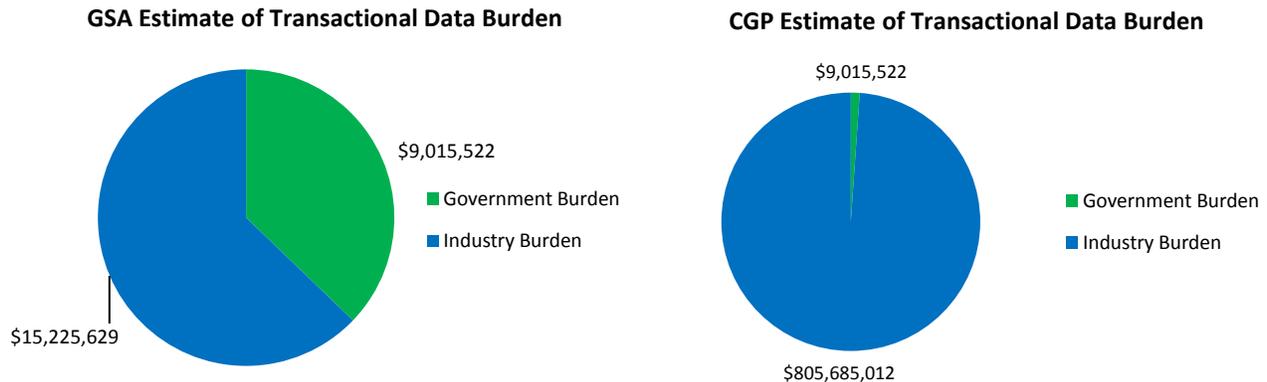
Transactional Data Burden + PRC Burden= Total Burden

Only 9% of respondents to the survey reported that the change to the PRC in the proposed rule would decrease the number of hours required for their company to comply with the PRC.

5. Cumulative Burden

The results of the survey indicated a much higher administrative burden on contractors than shown in the proposed rule. GSA estimated that the Total 1 Year cost of the transactional data reporting would be \$24,241,151. This includes a total cost to the government of \$9,015,522. Based on the survey results, the Coalition’s estimate of the Total 1 Year cost of transactional data reporting was 30 times that of GSA’s estimate of \$814,700,534¹. Including the burden of the PRC, the Total Burden of the proposed rule is \$873,200,534². The Coalition does not agree that this burden should be so heavily borne by the contractor community without the opportunity for equitable adjustments to pricing on GSA contracts.

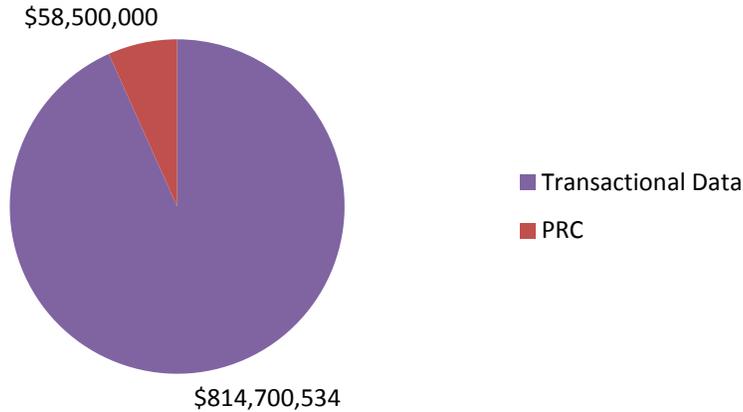
Contractors of all sizes that participated in the survey reported that difficult business decisions would have to be made about how to incur these costs. For many GSA contractors, the Federal market only represents 1-2% of total sales. More than 10% of the contractors surveyed said that they are reconsidering participation in GSA contracts (especially the Schedules program) due to the time and cost burdens of the proposed rule.



¹ Average estimated hours were calculated by finding the average burden reported by members through the survey. Average hourly salary used was \$68 per hour, the same amount that GSA used in their calculations. Number of contractors was the number GSA reported in Q1 of 2015. 37% of contractors were removed because in the proposed rule GSA estimated that 37% of FSS contractors have \$0 in sales. They were removed from the total amount of contractors when calculating the burden since their reporting requirement would be negligible.

² Total 1year cost of Transactional Data Reporting (\$814,700,534) + the PRC burden (\$58,500,000) same numbers referenced by GSA in OMB control number 3090-0235.

**Transactional Data and PRC Burden
(\$873M)**



It is important to note that the substantial burden imposed on contractors by this rule; combined with the continuing drive to lower prices regardless of terms will suppress the supply chain over time. The result will be reduced competition, limited or no access to commercial innovation and increasing costs for government.

D. The proposed rule does not adequately protect confidential commercial information

1. The unit prices paid by customers are normally considered proprietary information by commercial entities. While total contract price is generally considered public information, more detailed contract pricing – especially offered hourly labor rates – are usually considered by industry to be proprietary information that is not releasable beyond government officials who have a specific need for the information. Such information is submitted with restrictions on access. Posting such information to a GSA portal raises a number of security concerns including:

- who will have access to the information;
- how will the Government manage access to the information;
- and
- how the Government will protect the information from disclosure.

It will be difficult to protect confidential information from improper use when so many buyers will have the broad access contemplated by the rule. This is kind of publication and its associated risk, fundamentally, is not a good business proposition and, potentially, a losing proposition for both government and industry.

2. Given the importance of this issue, at a minimum, GSA should continue to honor the agreement that it now has on non-schedule vehicles that only the aggregate, summarized prices paid data are made available to federal customers. Currently prices paid data can NOT be attributed to a specific contractor.

E. The rule is insufficient to provide price analyses for significant portions of the GSA acquisition programs

1. The proposed rule would start with a pilot test limited to products and commoditized services. The eventual goal is to roll out the program across all GSA contracting programs. However, it is clear that the pilot cannot be applied reasonably to other GSA programs. We urge GSA to reconsider making a major investment in building a system that will have limited utility in the high dollar value and growth areas of its program.

2. Transactional data is of very limited value in analyzing prices of customizable commercial products/solutions, such as information technology and furniture, where it would be difficult to make valid comparisons between transactions. Information technology accounts for significant sales under both GWAC and Schedules programs. Furniture accounts for significant sales through the GSA schedules.

3. The preamble to the proposed rule states that the rule will not be applicable to the VA Schedule. The VA schedules account for \$12 billion in sales annually.

4. Even if the proposed data collection requirements could be made to work for products, the strategy has little, if any, utility to the evaluation of prices offered for services or solutions. Services now account for approximately 60% of Schedule sales, and are the expected area of growth for all GSA acquisition programs. Evaluation of prices for a service based

on transactional data poses several challenges, two of which are discussed below.

a. Focusing on service labor rates paid does not help the Government get better value for a total project or solution. Labor rates for particular labor categories constitute only one aspect of pricing services when a Statement of Work (SOW) is required. Federal Acquisition Regulation (FAR) 8.405-2 requires that, when ordering Schedule contract services priced at hourly rates, agencies must use a SOW setting forth the technical and performance requirements. Moreover, under FAR 8.405-2, the SOW must provide for a performance based order to the maximum extent practicable and use firm fixed price orders, as appropriate. This guidance confirms that a rate per item comparison is flawed as, consistent with the regulation, the government typically acquires a total service offering/solution – not just a specified number of hours. Focusing on rates for particular labor categories ignores differences in technical approaches and other terms and conditions.

By their nature, services are tailored to client SOWs and entail providing services within the client’s environment, which can vary greatly. For example, on one project, a contractor uses a mid-level programmer to develop code using a waterfall approach in an environment without much customer interaction, but on another project the same contractor also uses a mid-level programmer to develop code using an agile approach with considerable customer interaction. While they are both mid-level programmers, based on technical approach, environment, and specific skills (one requiring more customer service ability), the labor rate may vary considerably. This means a comparison of rates is meaningless, and will not in any way help the government obtain best value and reasonable price on a total project.

b. No defined standard for comparing units of “As a Service” Solutions. A trend has emerged in the private sector that the government has begun to adopt. It is the procurement of needed

systems or solutions “as a service.” In the fast-paced technology market, products are being created that blur the line between goods and services. Today, services are not only bundled with products, but also extend the functionality of products based on units such as per seat and per gigabyte. Without a clearly defined standard for the units being acquired, trying to compare unit prices on such solutions could lead the Government to draw incorrect comparisons and make incorrect procurement decisions based on them.

F. Transactional data is available from government and independent commercial sources

1. Much of the transactional data which GSA requests from industry is already in the possession of the government as a result of invoices submitted to ordering agencies. There is, however, a substantial cost of aggregating, analyzing and communicating that information. The proposed rule would pass the cost on to GSA contractors. In addition, the rule significantly increases the risk of contracting as failures to submit data that is current, accurate and complete could result in contract damages and potentially false claim allegations from the government.
2. Comparative pricing already exists on GSA Schedules. The proposed rule rationalizes that “the availability of prices paid information will lead to better prices...” Procurement professionals can already access and compare prices offered by multiple GSA Schedule contractors for a particular product or service using GSA Advantage!. Using GSA Advantage! for market research purposes, agencies already are encouraged to seek further reductions for orders. Agencies are also required to adhere to the GSA Schedule competition requirements at the BPA and task order levels. These competitive requirements – coupled with the publication of rates – provide the best motivation for contractors to provide their best pricing through offering market-driven discounts off of published pricing. Robust competition at the task order stage is the most effective mechanism for evaluating prices available in the market and decreasing prices paid by the government.

3. Free sites already enable consumers to compare the price of goods. Today, using online retailers like Amazon and sites such as NexTag.com and BizRate.com, consumers can search the vast marketplace for particular commercially available goods – for free. On these sites, consumers can also compare prices offered by multiple retailers for the same good – for free. It, therefore, is redundant to establish a Government portal (i.e., the Common Acquisition Platform) to provide this functionality in order to procure goods.

V. Recommendations

The government can more effectively achieve its goals using methods that are less costly for industry and the federal government. The Coalition recommends GSA take the following actions to immediately decrease price variability without undue burden to government or industry:

1. As part of GSA Schedule contract negotiations, compare offered prices for identical products to existing contract prices; reject offers that are outliers. This process will maintain all contract prices within a range which GSA has determined is reasonable. The Coalition recommends this process only with respect to *identical* (not similar) products.
2. Assure that offerors are authorized resellers. The solicitation already requires that offerors submit a Letter of Commitment/Supply. Enforcement of this provision would control the number of gray market and counterfeit products that inadvertently make their way onto the GSA Schedule and are priced artificially low. This process would have the added benefit of improving the quality of items supplied to federal customers.
3. Encourage contractors to update GSA Advantage! pricing and remove products that may no longer be offered for sale.
4. Increase training to customer agencies to assure that they are competing requirements as required by FAR 8.4. Training on how to compete an order should be ubiquitous. Training and tips on how to maximize competition using FAR 8.4 should be imbedded in training courses of FAI, DAU and similar training facilities. Every GSA e-tool

should have a help button to show how to compete an order. Every e-tool should have pop up buttons to remind customers of the importance of competition.

5. Pilot test collecting data internally. The government already has much of the data that its requests from contractors, however that data is not aggregated in a way that makes the data useful. Before GSA increases the reporting burden on industry or expends money and personnel resources to build a system to collect, analyze and communicate billions of data points, GSA should conduct an internal pilot test using its own assisted acquisition organizations. Such a test could validate the data elements to be collected and assess the actual cost vs. benefit of doing so.

6. Eliminate the PRC. If GSA believes, notwithstanding these comments, that transactional data is essential to pricing IDIQ contracts, it must reduce the existing cost of contracting. In the MAS Schedule program, this would mean total elimination of the PRC. Many commercial companies simply cannot withstand the cost of both requirements. While some large businesses that focus on the government may be able to withstand the cost, the requirement to both submit transactional data and comply with the PRC will weigh heavily on small and medium sized companies. Complete elimination of the PRC would remove a costly, high risk and unnecessary compliance requirement. The change would empower contractors to focus even more resources on improving performance and delivery outcomes for the American taxpayer.

VI. Conclusion

Imposing the transactional data reporting requirement on industry runs counter to OFPP's vision for federal acquisition as outlined in the memo, *Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance*. A central tenet of that vision is "removing regulatory barriers to innovation," with OFPP committing itself to "reduce the burden in commercial item acquisitions." The transactional data reporting would have the opposite effect. Rather than removing regulatory requirements, it would add one more regulatory requirement for industry without achieving the intended goal of a better price analysis tool for federal agencies.

Thank you for considering the Coalition's comments in response to the Transactional Data proposed rule. 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