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GSA'S PROPOSED TRANSACTIONAL DATA RULE AND ITS EFFECT ON SMALL BUSINESSES

HEARING

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

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THURSDAY, JUNE 25, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Richard Hanna [chairman of the subcommittee] presiding.

Present: Representatives Hanna, Hardy, and Takai.

Chairman HANNA. We will be called to votes, but I am confident that if they have not done it yet, they will do it in about 15 minutes. But the way it works is you still have—it takes quite a while to get through it, through the vote series, and we will probably be able to get the testimony of all of you, I think. We will certainly try, if that is all right with Congressman Takai. We will try that and we will just see how it goes.

I have an opening statement and a gavel that Emily is about to remind me I have to hit.

I want to thank you all for being here, incidentally, and apologize in advance for the nature of these meetings. We have no control over when they call votes, and if we did, it would not matter because everybody would have a different time.

So I will call this hearing to order, and I have an opening statement.

Good morning. Every June since I have been chairman of this Subcommittee, we have held a meeting of the General Services Administration, the GSA. This has not been by design but because every year they come out with a new idea that threatens the viability of small contractors.

Unfortunately, 2015 is no exception. Today, we will talk about the recent proposed rule to improve transparency into federal contracting. While I fully support any effort to give citizens and small business greater confidence in how their tax dollars are spent, this is a case of the cure being worse than the disease.

As one witness will testify, in its first year, this rule will cost twice as much as the total value of the federal contracts awarded. The price tag could be $800 billion. The proposed rule could mean that small businesses would need to have one employee spend three months a year just entering data. Keep in mind, this is data the government already has but does not collect centrally. While I

am all in favor of creating jobs, I do not think forcing small businesses to hire employees to provide data a second time is a worthwhile use of their dollars or tax dollars, because somebody has got to pay for this.

Finally, despite what GSA says, we will end up paying for this new rule. Data is not free. Businesses will decide it is better to sell independently of GSA, which will improve the government's cost to buy, or the small businesses will drop out of the federal market altogether, decreasing competition. In fact, we have already lost over 100 small contractors in the past two years. We cannot afford to exacerbate the problem.

I look forward to hearing from our witnesses today about the effects of GSA's proposed rule and any alternative they would suggest to improve how the government buys whatever it buys.

I now yield to the ranking member for his opening statement.

Mr. TAKAI. Thank you, Mr. Chairman, and good morning.

The federal procurement marketplace provides an important customer base for small businesses. For many firms, getting listed on the GSA schedules provide an efficient way to ensure their products and services are considered when agencies are making purchases. Purchases made by these agencies off the schedules account for more than $32 billion, or approximately 10 percent of all federal procurement dollars.

In Fiscal Year 2014, 35 percent, or $11 billion, went to small businesses through these orders. That is a significant infusion into the small business economy, helping entrepreneurs grow their enterprises, retain staff, and even create new jobs.

The GSA schedules have a number of benefits for both vendors and purchasing agencies. Most notably, it creates a simpler system that allows contracting officers direct access to the products and services of numerous firms without the need of issuing multiple solicitations for every requirement.

For small businesses with limited resources, relative inexperience navigating the procurement process, landing on a GSA schedule can be an important first step towards securing the federal government as a customer.

Despite these advantages, there are a number of concerns from the small business perspective with how the GSA schedule system functions and whether small businesses fully benefit from how it operates. For instance, many entrepreneurs have previously presented testimony to this Committee detailing how the adoption of the federal strategic sourcing initiatives have negatively harmed their sales and even caused some layoffs.

As this type of vehicle has expanded to additional industries and products through the government's new category management initiative, there are continued reservations among small business. And likewise, small firms have expressed similar concerns regarding GSA's proposed rules on transactional data. The rule requires that firms that hold schedule contracts while other government-wide acquisition contracts report transactional data through an electronic system. While it appears that much of this data is already available to the GSA, the new rule increases the frequency of reporting and expands what information firms are required to

provide. For small businesses, this could mean significant new burdens and perhaps a decline in their GSA schedule participation.

Mr. Chairman, Congress has long recognized that when small businesses provide services or products to the federal government, it results in a win-win. Agencies and taxpayers benefit from quality products that are provided at competitive pricing, while small businesses are afforded a chance to grow.

As GSA continues seeking efficiencies, it is important that maintaining transparency in the procurement process is not achieved at the expense of small business participation. I hope we can all work together to ensure that these two factors are properly balanced.

With that, I thank the witnesses for testifying today, and I yield back.

Chairman HANNA. Thank you.

If Committee members have an opening statement, I ask that they be submitted for the record. And as you know, you have five minutes. We want to hear what you say, so we will be a little bit—I will be a little bit flexible on that, or try to be.

We have one panel today. Our first witness is Sheila Armstrong, who is a partner with the law firm of Morgan Lewis and Bockius LLP. Bockius, is that how you pronounce it?

Ms. ARMSTRONG. Bockius.

Chairman HANNA. Bockius. In Dallas, Texas. She also served as co-chair of the Commercial Products and Services Committee, one of the committees of the American Bar Association's Public Contract Law Section.

Ms. Armstrong, you may begin. Thank you.

STATEMENTS OF SHEILA ARMSTRONG, PARTNER, MORGAN LEWIS AND BOCKIUS LLP; JOHN STANFORD, VICE PRESIDENT, NEXTWIN SERVICES; ROGER WALDRON, PRESIDENT, COALITION OF GOVERNMENT PROCUREMENT; JOHN HORAN, PARTNER, MCKENNA LONG AND ALDRIDGE

STATEMENT OF SHEILA ARMSTRONG

Ms. ARMSTRONG. Good morning, Mr. Chairman, Mr. Takai.

As mentioned, I am a partner with the law firm of Morgan Lewis and Bockius. I primarily counsel government contractors on commercial item contracting. So I work with quite a few GSA schedule contractors. And also as mentioned, I do serve as a co-chair of the American Bar Association's Public Section of Contract Law Commercial Products and Services Committee.

I would like to thank you for inviting me here today to talk to you about GSA's proposed Transactional Data Rule. GSA published this rule in March of this year. What the rule requires is monthly reports from a variety of GSA contractors. This includes both the schedule contractors, as well as those who hold IDIQ, indefinite delivery, indefinite quantity contractors, and what we call GWACs, Government-wide Acquisition Contracts, to prepare these monthly reports of all federal sales made during the prior month.

For GSA contracts, the rule will be implemented through a pilot program, which will apply to a limited number of schedules initially. For those contractors who participate in the pilot program, they will be alleviated from a burden, what we call the price reduc-

tions clause, which is another compliance clause that is in GSA contracts.

In the public meeting that GSA held on April 17th, I attended virtually. My perception of that meeting is that everyone in the room had concerns about the rule, including GSA's own inspector general. I think GSA was a little surprised about the negative reaction to the rule. There is a transcript that is supposed to be published of that hearing, but I have not yet seen that transcript.

The proposed rule raises a variety of concerns. There are four which I would like to address briefly today. The first, which I am sure you will hear from all our panel members about, is the cost of implementation and compliance. GSA has estimated that it will take six hours for contractors to implement systems to comply with this rule. I would suggest that for some contractors, it will take six hours for them to figure out which of their IT systems hold the various data elements that GSA has required for this rule. That does not allow any time for developing a report, ensuring that the report is accurate, and training its personnel on how they will submit that report on a monthly basis.

Likewise, the 31 minutes that GSA estimates it will take on average to prepare the monthly reports is grossly underestimated. This could not possibly allow any time for the contractors to actually review the reports to ensure that the data is correct. There is nothing in the proposed rule that suggests what would happen if the contractors submit incorrect data or if they simply remove data because it is obviously incorrect. I think these factors will have a disproportionate impact on small businesses who do not always have in-house resources for things like IT systems, and so they will have to go to vendors on an hourly basis to bring in expertise to help write these reports and prepare the transactional data.

The second problematic area is the potential expansion of what we call commercial sales practice requirements. GSA contractors are required to submit commercial sales practices prior to contract award and during contract performance when certain things happen, like if they go to add products to a contractor's increased prices. The proposed rule allows GSA to ask for CSPs at any time.

GSA should, although I am not sure that it understands the implications of preparing these CSPs, or even checking the box to say that CSPs have not changed. This requires contractors to go into their data systems and look at actual discounts on transactions. I mean, we see press release after press release from the Department of Justice stating that contractors have fraudulently provided this information when in reality they just have not checked. So this is a big concern.

The next concern is the cost benefit to collecting this information. We know it is going to cost a lot to collect the information, but what is not clear is what benefit GSA is going to receive from the information.

And then finally, is the confidential and proprietary nature of the information. Transactional data pricing has always been protected by the courts under FOIA, and GSA does not appear to appreciate based on comments made at the meeting that this is the case.

So I want to thank you again for inviting me to speak, and I am happy to answer any questions.

Chairman HANNA. Thank you.

Our second witness today is Mr. John Stanford, who is vice president of NextWin Services. NextWin assists commercially successful small businesses enter and grow into the federal market.

You may begin, Mr. Stanford. Thank you.

STATEMENT OF JOHN STANFORD

Mr. STANFORD. Good morning, Chair Hanna, Ranking Member Takai. Thank you for the opportunity to testify.

As noted, I am John Stanford, and vice president of NextWin Services. Part of our work is monitoring procurement policy changes, engaging their real world impact on businesses. Today's topic, GSA's proposed transactional data regulation, certainly gives us cause for concern. As noted, the rule would require vendors to share their pricing information through a new online reporting system. This pricing data in turn is a critical part of a larger GSA effort to create a common acquisition platform, an online marketplace with best in class government-wide contracts, all reforms with impacts on the small business community.

In our view, such impacts can be measured by three criteria. Cost, complexity, and opportunity. When viewed through these lenses, GSA's proposed transactional data requirement fails to best serve small businesses. The first, cost, considers how reforms will change the bottom lines of contractors, either through changing compliance burdens, pricing requirements, or altering resources needed to win work. Simply put, business owners ask themselves, will a given change increase or decrease the cost of doing business with the federal government.

As written, small businesses would face increased costs under the proposed rule. GSA recognizes the additional reporting requirement will undoubtedly have a cost for affected businesses. SBA's Office of Advocacy and GSA's own inspector general noted that estimates in the proposed rule appear drastically understated. I know others here today have completed more comprehensive measurements of this cost, and I will defer to them on providing those details. So estimates of this cost requirement may vary, but nonetheless, there will certainly be a cost.

Complexity, on the other hand, measures if a policy change will make selling to the government harder or easier. Essentially, will the federal market be more or less difficult to understand? Or as I often hear from business owners, am I going to need to hire someone for this?

While GSA contents its reporting solution will be user-friendly, our experience is that government data systems are anything but. After implementation, a successful GSA contractor would be required to monitor and update five government systems—GSA's eBuy Marketplace, the system for award management, Fed Biz Ops, the 72(a) Quarterly Reporting System, and now, the new Transactional Data Reporting System. For small businesses, this may often be in addition to SBA systems or certification requirements. All in all, a lot of government systems, each with their own complexities.

The third criterion is whether a change expands or limits opportunity to win contracts. When considering a policy, business owners

ask, "Will I have more opportunity to compete and win?" In our view, small businesses may see fewer opportunities from GSA contracts and vehicles in light of this proposed rule. Horizontal pricing, whereby the government can compare costs of similar items, makes price the critical factor in awarding a contract. Often, however, small businesses offer tailored and innovative solutions that in conjunction with competitive pricing make for best value in procurement instead of lowest price.

While GSA suggests that pricing will only be one factor in determining best value, it lends significant weight. The words "price" or "pricing" appear 165 times in the regulation, while "best value" only appears seven. Because it is unclear how, if at all, GSA would differentiate similar products to agencies seeking goods or services besides price, we are left to assume that agencies will have to use price as the determining factor. To the extent that this happens, especially for services, small business will suffer.

We do applaud efforts to streamline the acquisition process. The simplification of competition and removal of unnecessary costs associated with managing duplicative contracts benefits all parties. We believe, however, that the responsibility for aggregating price-related data should fall on GSA instead of the private sector.

Citing the cost of upgrading its data systems, GSA is proposing to ask vendors to report to GSA the details of what was purchased through GSA. This is like asking retailers selling on Amazon to report to Amazon what it sold on Amazon. This seems to be an inefficient way to collect data.

Finally, and speaking to the driver behind this regulation, we continue to be concerned about a vision of government procurement that seeks to categorize customized services into narrow categories. Individual agencies and programs under them have unique requirements. While the acquisition process is in need of modernization, a rushed process of aggregating similar but not identical purchases seems ill-advised.

It is our recommendation that GSA rethink its approach to transactional data, putting the collection burden on the agency rather than the vendor. One option, upgrading the systems to automatically collect this data, seems to be a common-sense solution that ultimately will have to be done. Why not now?

Thank you for holding this hearing today and shining light on an important issue. I am happy to answer any questions.

Chairman HANNA. Thank you, Mr. Stanford.

Next, we have Mr. Roger Waldron, who is president of the Coalition of Government Procurement. Believe it or not, we have time. We can break now but I think we do have time to get through. As you can see, there are 400 people who have not shown up yet. So you may begin. Thank you.

STATEMENT OF ROGER WALDRON

Mr. WALDRON. Chairman Hanna, Ranking Member Takai, and members of the Subcommittee, thank you for the opportunity to appear before you today to address the effect of GSA's proposed transactional data reporting rule on small businesses.

The Coalition for Government Procurement is pleased that the Subcommittee is focusing on the role of GSA's multiple awards

schedule program and promoting strategic acquisition and opportunities for small business concerns.

The Coalition is an association of small, medium, and large firms selling commercial services and products to the federal government. Our members hold contracts under the multiple awards schedule program, ITG WAC, and major individual agency contracts.

The multiple award schedule program is one of the most successful government-wide contracting programs available, with over 30 percent of the dollar volume of purchases going to small business concerns. Our members support the program as a valuable entre into the federal market, but they are increasingly concerned with GSA initiatives that increase the cost of contracting without corresponding value to customers and the American people.

One such initiative is GSA's proposed rule requiring that contractors collect and report transactional data on all sales made through GSA schedules and ITG WAC contracts. Coalition members oppose this rule for several reasons.

First, the reporting and compliance burden imposed upon contractors will be enormous. GSA estimates this burden will be six hours for initial setup and 31 minutes thereafter to administer. A survey of our members indicated that the actual burden greatly exceeds that amount. Respondents to the survey overwhelmingly said that their existing systems do not currently collect the data points GSA is seeking. In order to implement transactional data reporting on a monthly basis, systems would need to be built, or existing systems would have to be customized to collect, consolidate, and report the information to GSA.

Small business respondents to the survey reported that it would take on average 230 hours for initial startup time. Large and medium-size companies estimated that it would take on average 1,190 hours to implement.

The monthly administrative compliance cost also greatly exceeds GSA's estimate of 31 minutes. Small businesses reported that it would take 38 hours per month on average to administer the new requirement. Large and medium-size businesses estimated that it would take on average 81 hours per month.

The actual burden of the proposed rule is significant and cannot be absorbed without raising prices under multiple award schedule contracts, resulting in increased prices and costs for GSA customers. Moreover, and most fundamentally, this is data the government already has in in its possession.

It is GSA's position that the rules compliance cost is offset by changes to the price reduction clause. The price reduction clause is one of the most costly provisions of MES contracts, and our members would welcome a real change. The coalition has long taken the position that the clause should be eliminated as it has outlived its usefulness in ensuring that awarded contract prices remain fair and reasonable throughout the contract term.

GSA confirms this view in the proposed rule by noting that only three percent of price reductions result from application of the tracking customer provision of the price reduction clause. Our written testimony addresses this matter in detail, and we note that the changes to the price reduction clause proposed by GSA are cosmetic

and do not change the legal liabilities or the burden on contractors. Continuous competition at the taskor as required by the Federal Acquisition Regulation, assures that prices remain reasonable and eliminates the need for the costly and competitive price reduction clause.

Second, the proposed rule does not achieve the objective of providing GSA contracting officers information to negotiate fair and reasonable prices. The federal acquisition regulation provides that when conducting a price analysis using prior prices, the prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for a comparison.

In other words, the data has to be sufficient for a contracting officer to make an apples to apples comparison. The task order data to be collected is simply not comparable to contract-level pricing. And I might add, there are over 7,500 different varieties of apples.

Finally, a system that seeks to drive down pricing through constant comparison of individual and hypothetical transactions leads to a downward spiral in pricing that is inconsistent with the dynamics of the commercial marketplace and is not sustainable by industry over the long term. Such an approach will have a significant cost as it will compromise the government's long-term strategic interests in fostering competition, ensuring best value mission support, supporting small business, and accessing priceless commercial innovation.

I want to thank you for your time, and I look forward to answering your questions.

Chairman HANNA. Thank you. And I think because votes are going on and Congressman Takai is going to introduce our next witness, then we would like to get some questions in, it is probably an appropriate time to break, adjourn for a few minutes. It will probably be 20 minutes because this vote has to go through, and as you can see, no one is quite there yet. Almost no one. And there is one vote after this. So I would guess 20 minutes will do it.

Thank you, and relax.

[Recess]

Mr. TAKAI. Thank you, Mr. Chairman.

It is my pleasure to introduce Mr. John Horan, partner at the firm of McKenna Long and Aldridge here in Washington, D.C. Mr. Horan works in the firm's Government Contracting, Litigation, and White Collar Criminal Defense Practice Groups. He has spent 25 years working in government contract law and regularly assists clients selling commercial items on both the GSA and the VA schedules. Additionally, Mr. Horan serves on numerous American Bar Association Committees, including serving as the co-chair for the Consumer Products and Service Committee and the vice chair of the Procurement Fraud Committee.

Welcome, Mr. Horan.

STATEMENT OF JOHN HORAN

Mr. HORAN. Thank you.

Good morning, Chairman Hanna and Ranking Member Takai. Thank you for inviting me to testify.

In my view, GSA's proposed transactional data rule is afflicted with three of the most fundamental problems that a procurement regulation can have. One, it creates a significant, unnecessary, and underestimated burden on contractors, a burden that will be felt more acutely by small businesses. Two, the anticipated benefit to the government is poorly defined and is not likely to be realized. Three, the proposed rule is subject to misuse that can result in considerable harm to contractors, particularly small business contractors.

As we have heard, GSA estimates that it will take six hours to initially implement the procedures required to capture the transactional data, and an average of 31 minutes per month for ongoing reporting. GSA does not provide sufficient detail to analyze how these estimates are flawed, but virtually every informed party who has weighed in on these estimates believes they are inaccurate, including such diverse parties as major industry associations, such as the Coalition for Government Procurement and GSA's own Office of Inspector General.

Based on my experience, the effort required by the proposed rule will take significantly more time and expense than estimated by GSA. A contractor cannot simply gather and report the information but also must ensure that the information is current, accurate, and complete. Otherwise, the contractor will risk an allegation of fraud under the False Claims Act, as has been the case with essentially every other form of cost report submitted by contractors to the government.

Small businesses, which GSA estimates to be 80 percent of the contracts affected by this rule, are especially vulnerable to these added expenses because they often operate with fewer internal resources and lower margins than larger businesses. Industry also views the imposition of the burden as unnecessary because the data, as we have heard, is already available within the government. Ironically, GSA rejected modifications to its own databases to fully capture this data as too costly and unreliable and then imposed these requirements on contractors.

GSA anticipates that the transactional data will assist government buyers in determining the best value to the government when making a purchase. GSA also recognizes a point very important to industry; that price itself is not the only element of best value, but there are many other information points in determining best value. According to GSA, important considerations include total cost, desired performance levels, delivery schedules, unique terms and conditions, time considerations, and customer satisfaction.

The rule provides no means to obtain to connect this other important information to the transactional pricing data. Without this information, the transactional pricing data required by the rule will be of little or no value in determining the best value to the government, which is GSA's purchase for the rule.

Perhaps the most fundamental concern of industry is that GSA and government buyers will use this transactional data to drive down prices without consideration of these other value-added terms and conditions. Contractors that rely on the other value-added

terms and conditions will be unable to compete and will eventually leave the government market.

This is not an unfounded concern. I have seen contracting officers ignore these other considerations and focus primarily on price repeatedly in contract negotiations. GSA itself acknowledges that it has used transactional data under strategically sourced contracts to drive down prices. Again, small businesses are most vulnerable. Small businesses often operate as value-added resellers or otherwise distinguish themselves based on the value they add to a transaction that is not captured by transaction price.

Another fundamental concern of industry shared by small businesses is that the transactional data will not be adequately protected from disclosure. The rule does not describe the procedures that will be used to protect the data submitted by contractors. Industry is concerned that sensitive data will make its way into the hands of competitors, either through Freedom of Information Act requests, disclosures during negotiations, breeches of GSA systems, or other unintended disclosures.

In my view, GSA should not proceed with implementation of this rule until these fundamental issues have been addressed.

Thank you for hearing me on this important issue. And I am happy to answer any questions.

Chairman HANNA. Thank you.

I am going to ask Ranking Member Takai if he would like to ask the first questions since we have no other—okay, I will be happy to.

It really seems like GSA and everyone else are living in alternate universes. Often, you go to a hearing and you really have questions. It seems like this is so, on its face, a bad idea. I wish that GSA was here to defend this. It would be a much more interesting conversation, but I do not think it would be any more helpful since the preponderance of this is that they do not want to do it because it is too expensive for them, and yet they are asking you to do it, which clearly, even if you took the numbers that are suggested and cut them in half, you would have to say it is not worth it, particularly since they already have the information and they simply have to use it the way they want to use it.

In my time as chairman of the Subcommittee, I have seen GSA demand based efficiency models, their strategic sourcing model, the acquisition hallways and category management embraced by GSA. Now, we are in transitional data.

Mr. Waldron, it seems that there is something bigger going on at GSA. I know you monitor this agency. Maybe you can give us some idea of what you think is driving this, what appears to be counterproductive, harmful to small business, widely expensive, and pointless.

Mr. WALDRON. I think——

Chairman HANNA. Not to put words in your mouth.

Mr. WALDRON. What do I say after that, right?

Well, you know, I mean, I think from GSA's perspective, and I cannot really speak for them, they are searching for what they believe and implementing what they believe will drive lower prices. I think that is a huge focus of the leadership is driving lower pricing on their contract vehicles. And as the other panelists here have

indicated and you have mentioned as well, you know, best value in that context with regard to procurement is vital to meeting customer needs. And I think many of these things, whether it is the demand-based model, it is data reporting, they also have brand part number reporting requirements now and UPC code reporting requirements that despite conversations with GSA about the costs imposed by those, they are driving to a lower price model.

And in doing so, I do not know if it is counterintuitive or contradictory because to get to where they want to go, they are increasing costs for contractors. They are increasing—this rule is a prime example of that. It is being asked as part of—there is a new initiative, too, the competitive pricing initiative that is going on where GSA is not doing its own independent evaluation of the information with regard to horizontal pricing; they are shooting it over the transom to the contractor and asking the contractors to do the analysis to try to explain why their price is not as low as some other company's price, and there is issues whether it is unauthorized resellers. You know, there are gray market items. There are all kinds of other issues that GSA should be looking at as well. And the increased complexity to try to drive to this lower priced model fundamentally is making it harder for companies to compete. They are increasing in complexity. Our members would like to see a focus on streamlining the process; emphasizing competition at the task order level; investing in the electronic systems, whether it is GSA Advantage or eBuy to make it more efficient, more effective, more transparent. That would provide more opportunities for small businesses across GSA's program.

And fundamentally, what we are seeing at the end of the day—I like to put it in these terms. When you are performing at a government contract, there are two types of costs. There is a direct cost of performance that is actually accomplishing the task or delivering the product that the government wants. Then there is overhead cost, which is all the administrative costs of compliance with government unique requirements. In the context of the GSA Schedules program, that overhead cost is becoming a larger and larger piece of the pie, and that is not value-added to the government or the American people. And the direct cost, the actual performance, is getting smaller. And that is not a recipe for best value in the long run. So at the same time you are seeing a drive to lower prices, you are seeing increased complexity to try to get to those lower prices and it just does not work together.

Chairman HANNA. So is it safe to say that all these reforms cost money and push people out of the market, add to bureaucracy but do not help the process, and at the end of the day actually cost more?

Mr. WALDRON. I think that is a fair description of much of what is with regard to the GSA Schedules program in particular.

Chairman HANNA. This is not anecdotal evidence. This is something better than that.

Mr. WALDRON. Well, our members, for example, the Transactional Data Reporting Survey that we did, our members indicated clearly that it would significantly increase their costs of doing business with GSA and, and we had over 10 percent, about 11 percent of our members, we did not ask this question, but they indi-

cated that they would seriously consider leaving the GSA market as a result. They volunteered that information. That was not a question we asked in our survey. That they would seriously consider leaving the GSA market if this rule went through.

Chairman HANNA. Thank you.

I yield to Ranking Member Takai.

Mr. TAKAI. Thank you, Mr. Chairman.

Mr. Horan, the initial implementation of this rule is designed as a pilot program with other contracts being included if, in fact, the pilot is successful. Given your conclusions that the anticipated benefit of the rule to the government is poorly defined and unlikely to be realized, how do you think GSA is supposed to figure out if the pilot is successful?

Mr. HORAN. Well, the way I would like then to figure it out is if it actually produces a better value, best value to the government, considering the cost to the contractors. I do not think they can do that based on the manner in which the proposed rule is implemented here. What I think we will see from GSA is some type of calculation of, in their view, of cost savings that will be based entirely on prices and without consideration of the complexity of that type of analysis where you should be determining whether the prices would have lowered based on a competition at an order level and also the offset to those lower prices based on the loss of these other value-added services. And the finally, the consequence of pushing all contractors to lower prices regardless to the competition on GSA schedules, because I think you will see businesses, particularly small businesses, leaving the schedule as it continues in this direction.

Mr. TAKAI. Thank you.

I have been in the state legislature for 20 years, so we have dealt with these types of issues in regards to purchasing from a certain vendor for the lowest price versus the best value. And I know many of you had mentioned that this morning. Small businesses are known for the added value they can provide agencies with benefits such as customer service. Big corporations or big companies cannot do that.

Mr. Horan, you stated in your testimony that the new rule does not account for such added value. What could this omission mean not only to small vendors but also to the agencies that purchase their goods and services?

Mr. HORAN. I think those other terms that lead to best value could be lost. Again, that it could be—the procurement could be driven to low price only, and as a result of that, the contractors who offer some of these other terms and services that provide best value will lose sales at a minimum, perhaps be driven out of the market. And the flipside of that is eventually government purchasers will lose the opportunity to purchase from those type of contractors that provide best value in a manner that is not limited to price or low price.

Mr. TAKAI. Because they are out of the business or they are just not bidding anymore?

Mr. HORAN. Because they are out of the business. I mean, there are other issues as well. Because there is such pressure on contracting officers to look at only low price that sometimes they will

exclude consideration of best value but ultimately, I think they could be out of the business.

Mr. TAKAI. Okay, thank you.

The quotient for government procurement survey in its survey, small businesses indicate that it would take on average 232 hours to comply with the GSA's proposed rule.

Mr. Stanford, has your business done its own estimate on the hours it will take to comply with the new requirement, and do you find the results of the survey to be more accurate than GSA's own analysis?

Mr. STANFORD. We have not. And while we have looked at their study and the ABA work, we are also encouraged in accepting their conclusion because also SBA Office of Advocacy and GSA's own inspector general determined that those costs seem understated.

Mr. TAKAI. Their, meaning the coalition, not GSA's?

Mr. STANFORD. Yes; correct.

Mr. TAKAI. Okay.

Other than our spin on compliance, can you discuss some other costs that companies like yours will have to face because of this rule?

Mr. STANFORD. I will not speak to our company individually, but speaking to the companies we work with as they enter the federal market, the costs beyond compliance are—for small businesses are initial costs up front. So if you are getting a schedule, that is an enormous barrier for small businesses. Actually getting into the GSA eBuy system can be a barrier. As we make that more complicated, as we add additional systems, what we hear from businesses is they simply do not have the resources. I think one of the other panelists pointed to a conclusion that this rule would require an extra employee. For the case of a small business that has an innovative solution, they do not have that extra employee. And one conversation we often have with small businesses is whether or not they are ready to take on working with the federal government as it is a unique customer and this is just adding to the conversation that they are not ready, which is a cost to the government.

Mr. TAKAI. Thank you. I yield back.

Chairman HANNA. Mr. Horan—Hardy? Excuse me.

Mr. HARDY. Thank you. I apologize for being late.

Mr. Stanford, in your testimony, you had talked about Amazon as an example of how the GSA—and I hope somebody has not asked this question already—would place the burden on contractors and report contract information although the agency already has the data awarded to the contract. To me this is just another add-on of frustration to contractors. Being a small business individual, I have had to deal with federal contracts before. It appears to me that this is just another way of government trying to solve their issue rather than take care of the problems themselves that they have the information at their hands.

Would you agree to that in somewhat of that fashion? I have a little bit harder way of saying it, but that is——

Mr. STANFORD. Yes. And I think the chairman put it well. It is data that the government already has, and it does seem counter-intuitive and there is consensus amongst the panel that this does

not make any sense. And there really—in the commercial world, it really would not make sense for the person who is acting as the platform to procure the goods, to then need to be told what those goods and services cost.

Mr. HARDY. Does anybody believe that GSA has maybe underestimated the real cost of what this is going to impact the businesses? Does anybody care to address that?

Mr. WALDRON. Our members at the Coalition for Government Procurement, we conducted a survey and I think that is one of the biggest areas—it is the biggest area of disconnect between government and industry on this particular rule, the burden itself. And the burden goes to creating barriers to entry in the federal marketplace, the GSA. The burden goes to increasing costs for the taxpayer and for customer agencies who use GSA. Looking at it, we have addressed it in our written testimony. But at the end of the day, based on our estimates and our feedback from our members, and we conducted a survey where we were going to try to use GSA's language that they used in the rule, in their formula to come up with the numbers based on feedback from our members, it would cost over $800 million just to implement this rule across the GSA Schedules program. And at the same time, GSA estimated $24 million. And at the same time, GSA indicated in the rule that it would be too costly for the government or for it to adjust its systems.

I believe, if I recall, we were talking in the tens of millions of dollars, and what they failed to, I think, appreciate, or to their credit, having a public meeting and asking comment on it, they failed to understand or appreciate the hundreds of millions of dollars that it will cost industry who participate in the GSA Schedules program to comply.

Mr. HARDY. I will take it another direction.

Being a business guy, you know, I work on bids. I was a general engineering contractor, so I put out bids. Now they are asking you to detail everything you got. All your information that you have that might put you in the competitive motion, they are wanting us to provide that information, which they ask for line item bids. I do not have a problem with numbers because my clients and the rest of the stuff, do you not see that being a problem with the way that we are getting hacked around here in this federal government of maybe those issues of privacy out there? Anybody?

Mr. HORAN. I agree. I think it is a significant concern, and my clients have essentially universally voiced that concern. It is viewed, I think, in industry as competitively sensitive information. The rule is not clear on how it can be used, or more importantly, I think, how it will be protected. So, and it will be in the hands of many, many folks according to the GSA's plans. So I think I can say that generally, industry is very concerned about that, that competitively sensitive information will be out there for competitors to obtain.

And I guess I would also add that this information could cause harm if it is out there to contractors both in the commercial marketplace and the government marketplace because this type of pricing information would be valuable for commercial competition as well.

Mr. HARDY. Thank you. My time is expired. I yield back.

Chairman HANNA. I yield to Ranking Member Takai.

Mr. TAKAI. Thank you, Mr. Chairman. I do appreciate the extra time. I have three more questions.

We have heard from all of you about the problems associated with this rule.

Ms. Armstrong, in your opinion, is there anything that can be done to reduce the costs associated with this rule to make compliance easier for small business, or should GSA start from scratch?

Ms. ARMSTRONG. In my view, I think GSA should start from scratch and look at its own federal internal resources for this data. As we discussed, there is a great risk for contractors providing information to GSA. If the information is not correct, they can receive allegations that potentially would subject them to False Claims Act liability. So there is a great risk in contractors providing information to the government, which means they have to assure that the information they provide is correct. And that is one of the things that substantially increases the costs. And we are talking here about federal orders. We are not talking about commercial orders. GSA is seeking information on federal orders. So that information is within the government. I think GSA needs to look at its own systems and develop a way that they can make use of the information already in their possession.

Mr. TAKAI. Thank you.

Mr. Stanford, some have argued that the GSA will use this new information to make businesses—force them to lower their prices if they feel the vendor is no longer offering a competitive price. However, small business margins, as many of you mentioned, are extremely low and they, at times, cannot afford bulk discounts like the big companies. Is it clear to you what would happen if the GSA wanted to lower a price but a small business was unable to do so?

Mr. STANFORD. I think you would have two options. Either the small business would leave the federal market if they could no longer bear the small margins to make sure they were profitable. Or, as in the case for some small businesses that rely 80–90 percent of revenue in the federal market, they would go out of business.

Mr. TAKAI. Okay. Thank you.

And my last question, and I think many of you mentioned this, has to do with the inability of GSA to really figure this thing out themselves due to their antiquated computer system. So I just wanted to dig a little deeper, and maybe, Mr. Horan, you can spend some time talking about that comment you made in your testimony about it would be just easier for them to upgrade their system so that they can track and monitor the information that they are requesting on their side, rather than leave it to the burden of the small businesses.

Mr. HORAN. Yeah. I am not certain it will be easier, but it will be certainly—they would have to face some of the same complexities that they are willing to impose on contractors. But the point I was trying to make is that GSA, likely anticipating the criticism that they are imposing this obligation on contractors, took a look at their system and indicated in the role itself the preference to the rule changes that their systems would require changes because all

this data is not contained in a single spot and they would have to undergo the effort. And that is the same effort that concerns contractors. So they were unwilling to take that expense despite the data being equally available to GSA as the contractors, and are willing to impose that on contractors.

GSA having access to this information though could readily create a database or modify databases to do exactly what they want to do. They could gather this information either directly or through transactions from other agencies. They are just unwilling to incur that expense.

Mr. TAKAI. Anybody have any more comments regarding this particular question?

Mr. WALDRON. Yes. I do not know if it is the irony of the situation or not, is that GSA is going to have to spend money to build systems in any event. Because of the avalanche of data that they would be receiving under this rule, they are going to have to build systems. So why do they not take a look internally and see what is most efficient for them, for the government to try to figure out to manage its own data. Because they are going to have to build systems. We are talking, when you talk about monthly reporting across the GSA Schedules program, you are talking of hundreds of thousands of transactions, millions and millions of data elements to be reported, accessed, collected. They are going to have to build their own systems as well.

Just a couple other points. With regard to the access, the question was great about, you know, with recent events, security of the confidential information, you know, there is even another area, and GSA did not—I think the public meeting that was held on the rule, they gained an appreciation of the level of concern across industry with regard to this issue, and even in that context they have contractors supporting their effort. And there have been questions that I have received of what are the restrictions on those contractors with regard to use of the information that they are already getting that may be commercially proprietary information from other companies.

And lastly, just a thought on the question about whether people would have to leave, you know, if they are told lower your price, we get reports regularly of companies being asked to either lower their price or remove the item from the contract. And the GSA leadership is taking the position that that is not, and they have, to their credit, have said that is not the goal here from their perspective, but at the working level and the operational level, contracting officers almost daily are asking companies to either lower their price because they found a lower price on a horizontal comparison. If you do not lower that price, you need to delete the item from the contract.

Mr. TAKAI. Thank you, Mr. Chairman.

Chairman HANNA. Do you mean to say—is that not in a strange way collusion, knowing someone else's price and calling someone else and saying—another bidder for the same item and saying, "You are too high, lower your price"? I mean, it is a harsh word but——

Mr. WALDRON. I would say it is misguided. I think it is not good procurement policy because in this issue, you get into the rel-

ative terms and conditions, and is somebody an authorized reseller; are they not an authorized reseller? Is it a gray market product; is it not? These are things—due diligent things that GSA needs to be looking at.

And ultimately, really what we all want for our customer agencies and for the American people is a fair and reasonable price, a good price to be paid. And it seems like GSA is focusing so much on the contract level price at this level. When the price is paid is at the task order level, which is the level below competition under the contracts. And the focus is more on this rather than let us get the best, you know, a good price and a best value solution at the task order level. And that is where, from our membership's perspective, the focus needs to be. How do you enhance, streamline, and embrace competition at the task order level so that the American people, customer agencies get best value products and solutions—commercial best products and solutions.

Chairman HANNA. So they are asking for something that they are not prepared to take from a group of contractors who will incur enormous expense and ultimately GSA would also incur an enormous expense to accept this, and yet already admits it does not have the capacity really to use it. Is that fair?

Mr. WALDRON. I think it is fair to say that a lot more thought needs to go into the current approach. Our members oppose this rule. We think GSA should start over from scratch and look internally. Our written testimony includes several different recommendations. I will point to one. GSA conducting its own internal pilot of collecting its own information or other information of other agencies and seeing how—first of all, what data elements are really important? And much of what is being collected ignores the best value context or the nexus of it and terms and conditions that drive price. And most fundamentally, you are talking about transactional price, that task order pricing that is subject to competition. And to the extent they are using it to compare to contract pricing, as I said earlier in the testimony and we make clear in our written testimony, that is apples and, I do not know, watermelons. It is such a complete difference in terms of the terms and conditions. And that focus it seems to me does not get to the important thing—how do you get a better deal and a good business deal for both sides at the task order level? Because ultimately that is what leads to better government and better performance on behalf of the American people.

Chairman HANNA. Well, we have unanimity here today everywhere.

If there are no further questions for these witnesses, I want to thank all of them for being here today, and thank you for patience during votes.

When drafting this rule, GSA clearly did not understand the burden it was creating for small contractors. I am going to send a transcript of this hearing to GSA and to the Office of Internal Government Regulatory Affairs. I hope the GSA will either abandon this approach and start over or seriously rework the rule before it becomes final. This is an issue the Subcommittee will be monitoring and will continue to monitor, and we look forward to having another opportunity to meet with you if that is important.

I ask unanimous consent that members have five legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

This hearing is now adjourned. And thank you again.

[Whereupon, at 11:33 a.m., the Subcommittee was adjourned.]

APPENDIX

Morgan Lewis

STATEMENT OF SHEILA ARMSTRONG, ESQ.

PARTNER, MORGAN, LEWIS & BOCKIUS LLP

BEFORE THE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 25, 2015

1. Introduction

Mr. Chairman and Members of the Committee, my name is Sheila Armstrong. I am a partner with the law firm Morgan, Lewis & Bockius, LLP. My primary practice area is government contracts. I counsel a wide variety of businesses, both large and small, regarding issues related to commercial item contracts with the federal government. In particular, I counsel clients regarding contract compliance requirements under the General Services Administration Federal Supply Schedules (FSS) program. I also serve as a Co-Chair of the Commercial Products and Services Committee, one of the Committees of the American Bar Association's Public Contracts Law Section.

I would like to thank you Mr. Chairman and the Committee for inviting me here today to speak to you about GSA's proposed Transactional Data Rule.[1] GSA published its proposed Transactional Data Rule on March 4, 2015. Upon publication, the Proposed Rule immediately drew criticism from contractors, the legal community and even the GSA's own Inspector General's office. GSA also held a Public Meeting on the Transactional Data Rule on April 17, 2015 which was widely attended both in person and virtually through GSA's Internet meeting platform.

The essence of the Proposed Rule is that GSA seeks to implement a pilot program under which it will exchange a most favored customer pricing provision found in all GSA Multiple Award Schedule contracts known as the "Price Reductions Clause" for a more burdensome transactional data reporting requirement requiring contractors to report transactional data relating to all ***federal*** sales made by the contractor. The Proposed Rule also applies to both GSA's Federal Supply Schedule (FSS) contracts, as well as its non-FSS Indefinite Delivery Indefinite Quantity contracts and Governmentwide Acquisition Contracts. The Proposed Rule does not apply to VA FSS contracts in the pilot program.

The problems with the Proposed Rule are many. The four that I am going to discuss today are particularly relevant to small businesses. First, GSA grossly underestimates both implementation costs and compliance costs of transactional data reporting. These increased costs and burdens likely will have a disproportionate effect on small businesses who often have limited resources. Second, while GSA temporarily will suspend Price Reductions Clause compliance obligations for those contracts that are included in the Transactional Data Rule pilot program, it does not propose to suspended, and in fact potentially will expand Commercial Sales Practice (CSP) disclosure requirements, another arguably more burdensome and higher risk compliance requirement found in GSA Multiple Award Schedule Contracts. Preparation of CSPs takes a considerable amount of time and any increase in this requirement could have a disproportionate effect on resource-strained small businesses. Third, it does not appear that GSA is certain how it will use the voluminous amount of data that it seeks to collect under the Proposed Rule, but the potential for downward pricing

[1] 80 Fed. Reg. 11619 (March 4, 2015).

pressure that likely will result from transactional data reporting may have a disproportionate effect on small businesses who rarely win a "race to the bottom" on pricing. Fourth and finally, it appears that GSA has not fully considered the confidential and proprietary nature of the data that it seeks to collect under the Proposed Rule. Line item pricing has long been exempt from disclosure under the Freedom of Information Act (FOIA) due to its confidential and proprietary nature. This data also is protected from disclosure under the Trade Secrets Act.

II. Select Congress Regarding the Proposed Transactional Data Rule

A. Estimated Implementation and Reporting Costs of the Transactional Data Rule

GSA estimates that the public reporting burden for its contractors to initially set up systems for transactional data reporting at six hours.[2] This estimated six hours ***includes*** "the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information" as well as "training, compliance systems, negotiations, and audit preparation the new clause may require."[3] GSA estimates that the monthly burden thereafter will average[4] approximately 0.52 of an hour or 31 minutes per month.[5] According to GSA: "[t]his number takes into consideration the distribution of contract values (i.e. sales) and assumes monthly reporting burden rises with vendor sales based on the distribution of sales and obligations within FSS contracts and non-FSS contracts."[6] What GSA allows no time for is system enhancements that may be required should GSA elect to change the fields of data to be reported as it would have the right to do upon 60 days notice under the Proposed Rule.[7] In addition, these estimates of six hours for initial set-up and 31 minutes per month for ongoing reporting are grossly underestimated.

1. Initial Set-Up Likely Will Far Exceed Six Hours

GSA estimates that its contractors will spend approximately six hours to set up its systems to generate the monthly report required by the Transactional Data Rule.[8] This six-hour estimate includes the time that GSA estimates will be required for reviewing instructions, searching existing databases and other sources of information, and gathering and reviewing the collected information.[9] This estimate also includes the effort that GSA anticipates contractors will be required to make to institute changes to contractor training, compliance systems, negotiations, and audit preparation—and presumably includes the time and expense required to modify data-

[2] 80 Fed. Reg. 11625.
[3] *Id.*
[4] GSA estimates a range of two minutes (for contractors with $0 in sales) and four hours (for contractors with greater than $50 million in sales). *See id.*
[5] *Id.*
[6] *Id.*
[7] *Id.* at 11628.
[8] *Id.* at 11625.
[9] *Id.*

gathering, reporting, and information-technology (IT) systems to accurately and efficiently report the data required by the Proposed Rule.[10] GSA's own Inspector General's office acknowledges that contractors likely will spend far more than six hours to set up business systems for transactional data reporting.[11] As the GSA Office of Inspector General notes in its comments to the Proposed Rule:

> During GSA OIG preaward audits, Schedule contractors are asked to provide a sales database—including GSA transactional data—with at least 21 specific data fields for the contractor's last complete fiscal year. We consistently find that contractors maintain their transactional data in varying systems, using multiple formats, and unique data fields. Given this, we question whether GSA's estimate of 6 hours per contractor to configure their systems for reporting is accurate.[12]

This six hour estimate must assume that all data fields reside in the same IT system and that the report can be set up by one person without consultation with others inside or outside the company. However, neither of these assumptions is viable. As noted by the GSA Inspector General, contractors frequently maintain data in various systems throughout the company. Invoicing data, which will contain some of the field required by the Transactional Data Rule, will include fields such as line item price and contractor part number; however, this system likely will not include manufacturer part number. That field instead will reside in a purchasing database. In many cases, the systems that house the various fields GSA is requesting in its monthly report are not set up to communicate with one another. Accordingly, some contractors will need to manually compile the information required for transactional data reporting, or may need to upgrade their IT systems in order to comply.

In addition, the estimated six hours of set-up time cannot possibly include time for company personnel to confer with management and contract administrators regarding the data fields required and the accuracy of reports generated. For some contractors, particularly small businesses, setting up systems to capture and report transactional data may involve consultation with professionals outside the company at hourly rates thereby increasing the costs to the contractor. These estimated costs are not factored into GSA's six hour estimate for set up.[13]

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[10] *Id.*

[11] GSA Comments to GSAR Case 2013–G504: General Services Administration Acquisition Regulation; *Transactional Data Reporting*, at 6. Available at: https://www.gsaig.gov/?LinkServID=6A41DF8F-063D-0652-27F3AAF1F2F09E33&showMeta=0.

[12] *Id.*

[13] As noted in the ABA's Comments to the Transactional Data Rule:

The Section suggests that the hours required will in fact be much higher. Typically, any new reporting requirement will require extensive efforts to assess the availability of data, test the accuracy of the data, and determine the system enhancements needed to accommodate the new requirement. Many contractors may require substantial changes or upgrades to business systems in order to provide the data sought by GSA in a form that will allow for meaningful and accurate pricing comparison as intended. For example, the fields required by GSA for transactional-data reporting may not reside in the same IT system; few accounting systems include both manufacturer part number and contractor part number in the same system when those part numbers differ. Thus, contractors may need custom development to merge data elements from accounting and other systems (e.g., materials management) to meet the requirements of the Proposed Rule. These and other needed changes would require coordination among functions

2. GSA's Estimated Monthly Compliance Burden is Overly Optimistic

GSA's estimate that contractors will spend an average of 31 minutes per month to report transactional data is overly optimistic. This estimated time cannot possibly include any substantive review of the data to ensure its accuracy prior to when the contractor reports the data to GSA. In addition, should a contractor find any anomalies in the data (as is often the case when reviewing raw data) the contractor will need to review source documentation to verify whether the transaction is accurately recorded in the contractors IT systems. Furthermore, the estimated 31 minutes per month does not include any time allowed for ongoing maintenance of data, including but not limited to changes by GSA to the data fields required as permitted by the Proposed Rule.[14] Given the unknown ramifications on a contractor should it provide data to GSA that is inaccurate or incomplete, contractors will need to review the transactional data prior to submission which could take hours depending upon the size of the contract. When the contractor identifies transactions that appear to be anomalies, zero dollar transactions for example, it will be required to perform additional research to determine whether the transaction is properly recorded or whether revisions to the transaction are required.

B. GSA's Proposed Expansion of Commercial Sales Practice Disclosure Requirements is Unduly Burdensome

All GSA contractors must prepare and submit CSPs prior to award and at certain key times during performance of a GSA contract. For example, when a contractor seeks to increase prices or add items to the contract GSA requires either new CSPs, or a statement from the contractor that the CSPs have not changed since the time they were last submitted. In CSP submissions, GSA contractors must disclose ***current, accurate and complete*** information. This is one of the most critical and most burdensome requirements for all contractors participating in the Federal Supply Schedule program. A contractor's failure to submit current, accurate and complete CSPs open the contractor to unnecessary risks including potential liability under the Civil False Claims Act. Both the GSA Inspector General and the Department of Justice have settled many matters for hundreds of millions of dollars based on allegedly inaccurate CSPs submitted by a FSS contractor under the Multiple Award Schedules program. While GSA proposes to temporarily suspended Price Reductions Clause compliance requirement for those contracts that are included in the Transactional Data Rule pilot program, it has not suspended, and in fact potentially increases, CSP disclosure requirements.

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such as the contractors' IT departments and change management teams as well as responsible executives. The time needed just to search for, extract, review, and test such data, and implement system modifications, will well exceed six hours.

See ABA Public Contracts Law Section Comments on GSAR Case 2013–G504, General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting; 80 Fed. Reg. 11619 (March 4, 2015) available at: *http://apps.americanbar.org/webupload/commupload/PC407500/sitesofinterest_files/GSAComment.pdf.*

[14] 80 Fed. Reg. 11628.

GSA acknowledges in the Proposed Rule that "contractors continue to struggle to comply with the sales practice disclosure requirements."[15] A 2013 GSA OIG audit reports also confirm this point and highlights that for the majority of the contracts audited, CSP disclosures were not current, accurate and/or complete.[16] Yet, the Proposed Rule does not remove contractors' obligations to prepare CSP disclosures, and, instead potentially expands this requirement. The Proposed Rule provides:

> GSA would maintain the right throughout the life of the FSS contract to ask a vendor for updates to the disclosures on its commercial sales format—which is used to negotiate pricing on FSS vehicles—where commercial benchmarks or other available data on commercial pricing is insufficient to establish price reasonableness.[17]

Due to the potential financial risks created by inaccurate CSP disclosures, contractors must spend considerable time reviewing sales data and preparing current, accurate and complete CSPs when they are required to do so. Even a statement that the CSPs have not changed requires extensive review of transactional sales data to confirm that this statement is correct at the time that it is made. Many contractors engage outside accounting and legal professionals at great expense to assist in preparing CSPs. This is especially true for small businesses who often do not have in-house resources available to complete this burdensome task. GSA's potential expansion of this requirement without any discussion of the estimated burden this places on contractors is unreasonable.

C. Use of Transactional Data Collected

While GSA is proposing to collect voluminous amounts of data under the Transactional Data Rule "to improve GSA's ability to conduct meaningful price analysis and more efficiently and effectively validate fair and reasonable pricing on both its non-FSS and FSS vehicles,"[18] it has not clearly articulated, in either the Proposed Rule or at the Public Meeting, how it intends to use this data once collected. In addition, while "GSA recognizes that use of prices paid information must be done within the context of seeking to obtain the best value for the taxpayer,"[19] GSA's focus appears to be on driving prices down in the marketplace and the savings that the Transactional Data Rule promises for GSA.[20] However, as GSA also recognizes in the Proposed Rule, for most commercial items, it is the commercial market and not the government market that is

[15] *Id.* at 11623.

[16] *See* Major Issues from Multiple Award Schedules Audits, Audit Memorandum Number A120050-3, Mar. 25, 2013. Available at: http://www.gsaig.gov/?LinkServID=CBDFF5C2-B1C0-0A65-5F7701BBDFA9CE5D&showMeta=0.

[17] *Id.* at 11621.

[18] *See* Major issues from Multiple Award Schedules Audits, Audit Memorandum Number A120050-3, Mar. 25, 2013. Available at: http://www.gsaig.gov/?LinkServID=CBDFF5C2-B1CO-OA65-5F7701BBDFA9CE5D&showMeta=O.

[19] *Id.*

[20] *See id.* at 11622 ("The availability of prices paid information will lead to better prices for the taxpayer by improving the agency's ability to conduct price analysis. It will also improve the quality of both contract and order level competition because vendors will know that their customers have greater market intelligence on what other agencies have paid in similar situations.").

the market driver.[21] Accordingly, GSA has not explained how collection of data on ***government*** sales transactions from contractors will achieve this lower pricing.

Based on GSA's recent activities with its GSA contractors, it seems that GSA may use transactional data to attempt to reduce GSA ***list price*** which is a ceiling price that can be, and frequently is, discounted by contractors based on the terms and conditions of a particular order and competition in the marketplace. In recent weeks, GSA has been issuing communications to its FSS contractors across various FSS schedules. The sample text of these communications is attached to this Statement as **Exhibit A.** I have had several clients who have received similar communications that are transmitted with a spreadsheet showing list prices offered by other GSA contractors for what allegedly are the exact same contract items. If GSA were to implement a similar exercise using the transactional data it receives under its pilot program, which notably does not include a field to identify the reason for any additional discount that may have been granted, this downward pricing pressure could have a detrimental effect on small businesses. Small businesses often do not have the buying capacity and/or overhead structure that allows them to compete with this type of pricing pressure.

D. Protection of Confidential and Proprietary Information

The transactional data that GSA seeks to obtain through the Transactional Data Rule, in particular line item pricing information, is recognized as confidential and proprietary information under the Freedom of Information Act (FOIA)[22] and the Trade Secrets Act.[23] FOIA Exemption 4 protects "matters that are . . . trade secrets and commercial or financial information obtained from a person and privileged or confidential."[24] In addition, the Trade Secrets Act prohibits unauthorized disclosure of "practically any commercial or financial data collected by any federal employee from any source in performance of the duties of his or her employment."[25] At a minimum, the reporting of line-item pricing contemplated by GSA under the Proposed Rule is protected from disclosure by FOIA Exemption 4 and prohibited from disclosure by the Trade Secrets Act.

The Proposed Rule does not state how GSA will protect the transactional data it receives from contractors from public disclosure. In addition, based on comments made by GSA personnel at the Public Meeting, it appears that GSA has not fully considered the confidential and proprietary nature of the data that it seeks to collect under the Proposed Rule. The type of data required by the Proposed Rule frequently is provided by contractors to the government with a legend identifying the confidential and proprietary nature of the data. GSA should consider how contractors can include

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[21] *Id.* at 11622.
[22] 5 U.S.C. §552(b)(4).
[23] 18 U.S.C. §1905.
[24] *See Canadian Comm'l Corp. v. Air Force,* 514 F.3d 37, 39 (D.C. Cir. 2008).
[25] *CNA Financial Corp. v. Donovan,* 830 F.2d 1132, 1140 (D.C. Cir. 1987).

such a legend when reporting confidential and proprietary data through an electronic transactional-data reporting system. GSA also should explain how it intends to ensure that this confidential and proprietary line item pricing is protected from disclosure outside of the government. Finally, the proposed rule should provide remedies for contractors in the event of improper disclosure of this protected data by GSA.

III. Conclusion

As discussed in my statement, and as is evident from reading the comments submitted on the Transactional Data Rule, the Proposed Rule, as drafted, raises significant concerns for all types of parties involved in GSA contracting. GSA should refrain from issuing a final rule unless and until it is able to address the concerns raised in the various comments submitted. In addition, GSA should further analyze the actual cost of compliance to contractors, as well as the additional costs that will be incurred by GSA to manage the tremendous amount of data that it would receive, and compare that to the benefits that GSA believes it actually will receive from the data collected under the Proposed Rule. As proposed, it appears that the costs of the Proposed Rule will far outweigh any perceived benefit that GSA will receive.

Mr. Chairman, I again thank you for inviting me to speak to the Committee today and I am happy to answer any additional questions.

Exhibit A

Subject: RESPONSE REQUIRED WITHIN [XX] DAYS - Addressing Price Variability under the Federal Supply Schedules Program

The Federal Acquisition Service (FAS) is committed to providing a Federal Supply Schedules (FSS) program that continues to deliver to our customers a best-in-class contract solution for commercial items that is adaptable and competitive in the Federal marketplace.

Our customers tell us they turn to the FSS program for its speed, compliance, and access to small businesses. They also tell us that they want a more competitive pool of contractors at the contract level to improve competition at the task order level.

An analysis of the FSS program has revealed wide pricing disparities across identical items. This has resulted in customer confusion and decreased confidence in the ability of the FSS program to provide best-value solutions. In response to these customer concerns and changing market conditions, FAS will be working with our FSS suppliers on an initiative to review the wide range of prices for identical products that are offered to our customers.

This competitive pricing initiative is aimed at identifying and addressing price variability across the FSS program. This will be accomplished with the help of a pricing tool that has the ability to perform in-depth horizontal pricing analyses of the more than 45 million awarded items on GSA Advantage! and eMall. Horizontal pricing analysis simply means that offered prices will be compared to other awarded FSS prices for the exact same item. FAS recognizes that both price and nonprice factors (such as contract terms, warranties, etc.) play an important role in the determination of competitive pricing. The horizontal pricing tool is a market research resource that aids in the identification of potentially uncompetitive pricing. The tool "flags" supplies in cases where an item has an awarded price that greatly exceeds prices awarded for identical items. This flag is cause for a further review, wherein the contracting officer seeks additional information from the contractor in order to determine the rational for the higher price.

A recent pilot program making use of the pricing tool and analysis demonstrated that some suppliers provided with competitive pricing intelligence were able to make price adjustments that increased their Federal revenue.

FAS needs your help to further improve and expand the FSS program. By addressing price variability, the program will better meet our customers' expectations and help you be more competitive in the Federal marketplace.

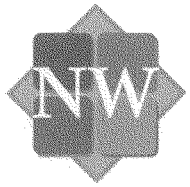
You are receiving this letter because we have identified supplies on the referenced contract with prices that are much higher than other FSS partners for the same item. We recognize that pricing is but one component of best value, and would like to work with you to ensure that FSS pricing is competitive.

Please review the identified items and data in the attached spreadsheet and consider what the pricing intelligence reveals about your competitiveness in the marketplace. We are undertaking this effort in partnership with our suppliers in order to help the FSS program remain the go-to solution for our Government customers and to help you grow your business through increased sales and revenue.

If you feel there is additional information that supports the competitiveness of the currently awarded price, you may submit this information for consideration under the "Comments/Justification" column. Alternatively, you may propose a reduced price under the "Revised Schedule Price" column. Responses should only be entered under these two columns - do not alter the remainder of the spreadsheet. Please notify your Schedule contracting officer if any identified items are included under established Blanket Purchase Agreements (BPAs) that would be affected by pricing changes.

I would appreciate a response to this request by [date] and am happy to discuss and work through this process with you.

Thank you, in advance, for your cooperation, as we partner to make the FSS program the obvious first-choice solution for Government buyers. We are happy to answer any questions you may have regarding this request - please contact [name] at [contact information] for further assistance.



Testimony of John Stanford

Vice President
NextWin Services LLC

Submitted to the

House Small Business Committee
Subcommittee on Contracting and Workforce

"GSA's Proposed Rule on Transactional Data Rule and its Effect on Small Businesses"

June 25, 2015

Good morning. Chair Hanna, Ranking Member Takai and distinguished Members of the Subcommittee, thank you for the opportunity to testify.

My name is John Stanford. I am the Vice President of NextWin Services, a consulting firm designed to assist commercially successful businesses enter and grow in the federal market. Part of our work is monitoring procurement policy changes and gauging their real-world impact on businesses. We also work closely with entrepreneurial organizations, like Women Impacting Public Policy (WIPP), that actively participate in procurement dialogue and support many of the small business procurement reforms initiated by this Committee. Thank you for the many reforms over the last three years that have enabled more small businesses to compete for government contracts.

Today's topic, proposed transactional data regulation from the General Services Administration (GSA), gives us cause for concern. The proposed rule would require vendors to share their pricing information for goods and services sold through GSA contracts to other government agencies. It would also create an online reporting system to enable the reporting of that pricing data. This pricing data, in turn, is a critical part of a larger GSA effort to create a Common Acquisition Platform—an online marketplace to identify best-in-class contracts across the government.

Specifically, contractors would be required to report prices of goods and services delivered through Federal Supply Schedule (FSS) contracts (with the exception of FSS contracts at the Department of Veterans Affairs), GSA Governmentwide Acquisition Contracts (GWACs) and GSA Governmentwide Indefinite-Delivery Indefinite-Quantity (IDIQ) contracts. Required transactional data includes unit measure, quantity of items sold, Universal Product Code, price paid per unit, and total price.[1] Under the proposed rule, this data would be reported monthly through an online portal. For non-FSS contracts (GSA GWACs/IDIQs) the requirement would take effect immediately. The FSS contracts, which already report some data through the price reduction clause, would undergo a pilot program in select schedules.

These efforts are part of a broader acquisition reform called "category management," in which the government seeks to unify purchases of goods and services in the same category governmentwide.

Evaluating GSA's Proposed Rule

In our view, the effect of most contracting reforms on small businesses can be measured by three criteria: cost, complexity, and opportunity. When viewed through these lenses, GSA's proposed transactional data requirement fails to best serve small businesses.

Cost

The first criterion, cost, considers how reforms will alter the cost of doing business with the federal government—either through

[1] Transactional Data Reporting, 80 Fed. Reg. 11,619 (March 4, 2015)

changing compliance burdens, the impact of pricing requirements, or altering the resources needed to win work. Simply put, will a given change increase or decrease the cost of doing business with the federal government?

Small businesses would face increased costs if the proposed rule were implemented as written. In the proposed rule, GSA recognizes the additional reporting requirement will undoubtedly have a cost for affected businesses.[2] The Small Business Administration (SBA) Office of Advocacy and GSA's own Inspector General noted that estimates in the proposed rule appear understated.[3] So, although estimates of this requirement vary, there is a cost.

Complexity

Complexity, similarly, measures if a policy change will make selling to and working with the government harder or easier for small businesses. It is important to note that complexity and cost, while related, are not the same. Even simple compliance charges can drive up cost. Essentially, will the federal market be more or less difficult to understand? Or, as we often hear from business owners, "will I need to hire an expert for this?"

While GSA contends its reporting solution will be user-friendly, our experience is that government data systems are anything but. Should this be implemented as is, a successful GSA contractor would be required to monitor and regularly update four government systems: the GSA eBuy marketplace for schedule-related opportunities, the System for Award Management (SAM) for registrations, FedBizOpps for additional opportunities that could be procured through the schedule, and either the 72A Quarterly Reporting System or the new transactional data reporting system. For small businesses this may often be in addition to SBA systems (e.g. Dynamic Small Business Search) or certification requirements.

Another way to consider complexity for small businesses approaching the federal market is to examine differences between government contracting and the commercial sector. The need to report data on what a customer buys through a platform and at what price to the platform is a departure from standard business practices and only adds to the complexity of an already complex system.

Opportunity

Lastly, small businesses view reforms in the context of expanding or shrinking opportunity to win business with the government. Recent shifts in acquisition policy to focus on limited-participant vehicles to award large contracts are examples of policies that generally took away opportunities from the bulk of small businesses (versus open competition for such goods and services). Business owners are essentially asking, does this mean more opportunity to compete?

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[2] *Id.* at 11,625.

[3] SBA Office of Advocacy, Comments on Transactional Data Reporting, p. 3, available at *http://www.regulations.gov/#!documentDetail:D=GSA-GSAR-2014-0020-0022*; GSA Office of Inspector General, Transactional Data Reporting, p. 10, available at *https://www.gsaig.gov/?LinkServID=C82E3F6B-D054-1D53-16D86346751A2527&showMeta=0*.

Small businesses may see fewer opportunities from GSA contracts and vehicles in light of this proposed rule. Simply put, this implementation of "horizontal pricing"—whereby the government can compare costs of similar items—makes price the critical factor in determining best value. Often, small businesses offer tailored and innovative solutions that, in conjunction with competitive pricing, make for best value in procurement. It is the stated objective of the federal government to seek best value in certain procurements, of which pricing may be only one factor.

While GSA suggests that pricing will only be one factor in determining best value, it lends significant weight; the words "price" or "pricing" appear 165 times in the regulation while best value only appears 7 times.

Because it is unclear how, if at all, GSA would differentiate similar products to agencies seeking goods or services besides price, we are left to assume that agencies will have to use price as the determining factor. To the extent that this happens—especially for services—small business will suffer.

Missed Opportunity for Automatic Data Collection

We applaud GSA's effort to streamline the acquisition process. Indeed, the rule identifies how much can be gained by both vendor and customer. The simplification of competition and removal of unnecessary costs associated with managing duplicative contracts would be beneficial to all parties.

We believe, however, that the aggregating of price-related data responsibility falls on GSA instead of the private sector. Citing the cost of upgrading its data systems, GSA is proposing to ask vendors to report to GSA the details of what was purchased through GSA. This is like asking retailers selling through Amazon to report to Amazon what it sold, through Amazon. To take this example one step further, Amazon would then use that information to advertise pricing to other consumers, on Amazon. This seems to be an inefficient way to collect data.

While not a perfect comparison, GSA in many ways operates as an Amazon-like part of the acquisition process. The intent behind this rule is seeking to make a best-in-class contracting marketplace. Yet, GSA has decided to pass on investing in a data collection system that could gather this information automatically.

Small Business Impact of Category Management

Speaking to the larger issue of which transactional data reporting is one component, we are concerned about the impact of larger acquisition reforms on the small business community. What was formerly known as "strategic sourcing" has now morphed into the term "category management" and poses threats to a diverse industrial base complete with small business participation.

While there are certainly benefits to procurement vehicles, including federal supply schedules, GWACS and IDIQs, they all constrain small business participation. Government acquisition experts may consider them necessary for 21st century procurement, but by

their very definition, they limit competition—inhibiting the ability of small businesses in particular to pursue certain opportunities. The initial costs of these contract vehicles are much harder for small businesses to bear than their larger counterparts, both in terms of resources and time (e.g. the nearly year long waiting period to get on an FSS). This proposed rule does little to address this concern, and even cements the use of such acquisition mechanisms for decades to come.

Similarly, we continue to be concerned about a vision of government procurement that seeks to categorize customized services into narrow categories. Individual agencies, and programs under them, have unique requirements. While the acquisition process is in need of modernization, a rushed process of aggregating similar (but not identical) purchases seems ill advised.

It is our recommendation that GSA rethink its approach to transactional data, putting the collection burden on the agency rather than the vendor, especially smaller businesses. One option—upgrading systems to automatically collect this data—seems to be a common sense solution that ultimately will have to be done. An automatic reporting solution gives the government the best data to consider procurement strategies and lessens the burden on businesses.

Thank you for holding this hearing today and shining light on an important issue. I am happy to answer any questions.

STATEMENT OF ROGER D. WALDRON

PRESIDENT OF THE COALITION FOR GOVERNMENT PROCUREMENT

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE OF THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 25, 2015

Chairman Hanna, Ranking Member Takai, and Members of the Subcommittee, I appreciate the opportunity to appear before you to address "GSA's Proposed Rule on Transactional Data and its Effect on Small Businesses." An efficient and effective procurement system that allows businesses of all sizes to deliver best value solutions is critical to meeting agency missions and serving the American people. The Coalition for Government Procurement (the Coalition) is pleased that the subcommittee is focusing on the impacts of the transactional data proposed rule on contractors that participate in the GSA Multiple Award Schedules (MAS) program, especially small businesses. We have heard significant concerns from our members on the cost and administrative burdens of the rule, and sincerely appreciate the opportunity to share this information with you.

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. Members include small, medium and large business concerns. The Coalition is the only association of its type with a membership spanning a broad cross section of service and commodity types. The Coalition is proud to have worked with Government officials for more than 35 years towards the mutual goal of common sense acquisition.

I. The Transactional Data Proposed 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. GSA's objectives in collecting the data are to improve the ability to conduct meaningful price analysis and decrease price variability, validate fair and reasonable pricing more efficiently and effectively, and improve their customers' ability to compare pricing prior to placing orders under GSA contracts.

The transactional data to be reported is:

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 transactional 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. Summary

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

A. 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.
B. The proposed rule imposes heavy tracking and reporting burdens on GSA schedule contractors at a high cost to government.
C. The proposed rule does not adequately protect contractors' confidential commercial information.
D. The transactional data is either already in the government's possession or available from independent commercial sources.
E. The proposed rule is not reasonably constructed to achieve GSA's stated objectives.

GSA can more effectively achieve its goals using methods that are less costly for contractors and its agency customers.

III. Detailed Comments

A. 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.

An underlying concern from businesses of all sizes is that transactional data reporting and the prices paid portal that will house this information 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 spiral in pricing that is inconsistent with the dynamics of the commercial marketplace, which is the basis for GSA's Schedules program. 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, it 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 and innovative emerging businesses. 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 horizontal pricing comparisons are being used to drive ever lower contract level pricing. Contractors are being told to lower their prices based on horizontal price comparisons or delete the item from the contract. Industry remains very concerned regarding the eventual use of transactional data to further suppress prices to unreasonably low contract levels. Small businesses in particular are at risk in this system due to the reduced margins upon which they operate.

B. 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 were 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 proposed 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

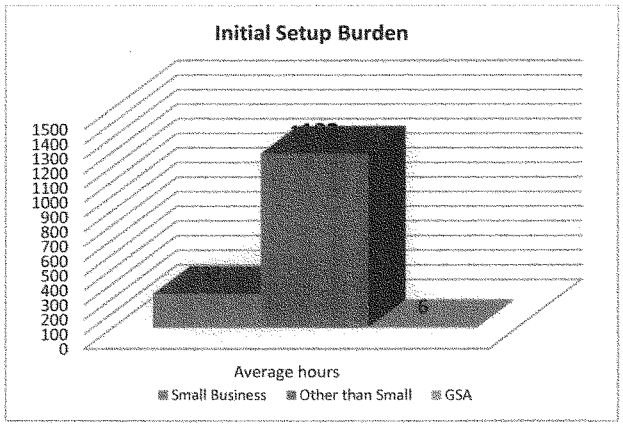
GSA contractors report, like the government, that transactional data is not readily available. Respondents to the survey overwhelming said that currently available commercial systems do not already collect the data points GSA is seeking in one place, or at all. As a result, in order to implement transactional 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 1,192 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."

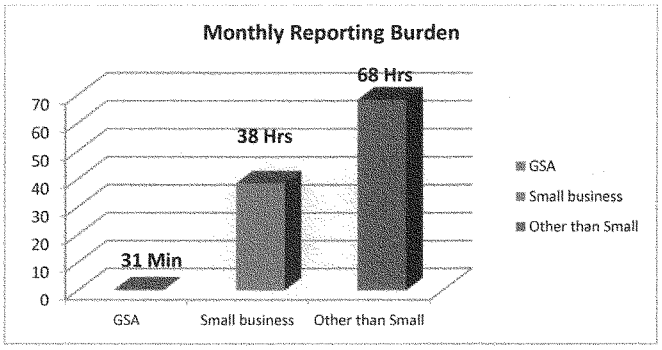
Contractor estimates of the one-time initial setup burden were *far greater* than GSA's estimate of 6 hours (which covered time to review instructions, search existing data sources, gather and maintain the data needed, complete and review the collection of information, training, compliance systems, negotiations, and audit preparation that 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 GSA 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. For small businesses, committing nearly one work week per month on the transactional data reporting would be a huge burden and would require investment in additional personnel.

Again, the proposed rule suggests that contractors should undertake this burden at no cost—in other words, GSA does not intend to allow for economic price adjustments to Schedule pricing to cover the costs of reporting the transactional data.



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.

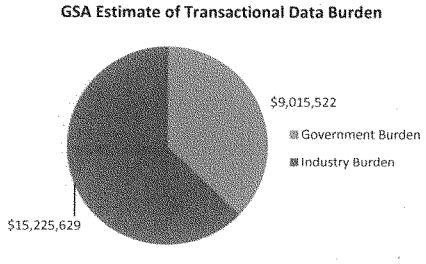
Transactional Data Burden + PRC Burden= Total Burden

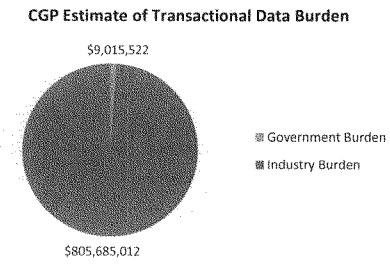
Only 9% of respondents to the survey reported that the change to the PRC in the proposed rule would decrease the number of hours required for their company to comply with the PRC.

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 $814,700,534[1]. Including the burden of the PRC, the Total Burden of the proposed rule is $873,200,534[2]. 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.

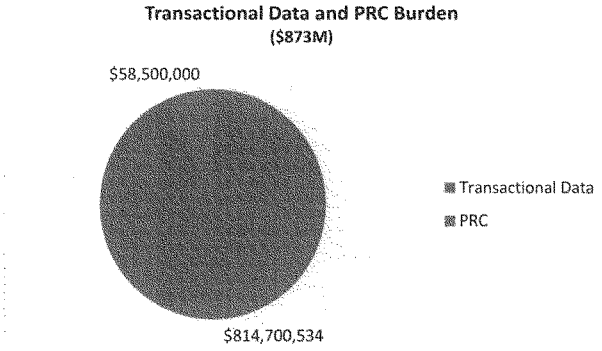
Contractors of all sizes that participated in the survey reported that difficult business decisions would have to be made about how to incur these costs. For many GSA contractors, the Federal market only represents 1-2% of total sales. More than 10% of the contractors surveyed said that they are reconsidering 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 1 year 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.



It is important to note that the substantial burden imposed by this rule on small and large contractors; combined with the continuing drive to lower prices, regardless of terms, will suppress the supply chain over time. In particular, the administrative burden of the proposed rule will serve as a significant barrier to entry for small businesses that have historically relied on the MAS program as a key initial entry point into the federal market. The result will be reduced competition, limited or no access to commercial innovation and increasing costs for government.

C. The proposed rule does not adequately protect contractors' 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;
- how will the Government protect the information from disclosure.

Contractors are concerned that it is not feasible for the government to protect this confidential information from improper use when so many buyers will have broad access to it as contemplated by the rule. This publication and its associated risk, fundamentally, are 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.

D. 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. One of GSA's primary objectives in collecting transactional data is to conduct more meaningful price analysis and comparisons. However, 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 their online catalogue, 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.

E. 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 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.

IV. Recommendations

The government can more effectively achieve its goals and reduce the burdens on small businesses by 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 for the Federal Acquisition Institute, Defense Acquisition University 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 versus benefit of doing so.

6. Eliminate the PRC. If GSA believes 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. Moreover, the effectiveness of the PRC is highly questionable. As GSA noted in the background section of the proposed rule, only three percent of price reductions under the MAS program were attributable to the "tracking customer" requirement of the PRC. 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 GSA contractors runs counter to ongoing efforts by the Chief Acquisition Officers (CAO) Council, the Office of Federal Procurement Policy and GSA to reduce barriers to the Federal market. In 2014, the CAO Council, OFPP and GSA launched a National Dialogue to collect feedback

from the public about the rules, requirements and procedures that create barriers to the Federal market and ideas about how to improve the procurement system. The public responded loud and clear that to improve Federal procurement, reporting burdens need to be reduced. Implementing the transactional data reporting in the proposed rule 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. Members of the subcommittee, the Coalition for Government Procurement is pleased that you are focusing on the impacts of the transactional data proposed rule on contractors that participate in the GSA Multiple Award Schedules program, especially small businesses. We stand ready to provide you with any additional input at your request. Thank you.

MCKENNA LONG & ALDRIDGE, LLP

STATEMENT OF JOHN G. HORAN, ESQ.

PARTNER, MCKENNA LONG & ALDRIDGE, LLP

BEFORE THE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 25, 2015

1. Introduction

Mr. Chairman and distinguished members of the Committee, thank you for inviting me to testify. My name is John G. Horan and I am a partner at the law firm McKenna Long & Aldridge LLP. I have over twenty-five years of experience in the practice of government contracts law. My practice is focused on representing companies, both large and small, selling commercial items to the federal government, particularly through the General Services Administration and Department of Veterans Affairs Federal Supply Schedule (FSS) program. I regularly assist companies in ensuring compliance with the contract, regulatory, and statutory requirements applicable to the FSS program. I also serve as a Co-Chair of the Commercial Products and Services Committee, and as a Vice-Chair of the Health Care Contracting and Procurement Fraud Committees of the American Bar Association's Public Contracts Law Section.

In my view, GSA's proposed Rule to amend its acquisition regulations to implement a pilot program to require contractors to report transactional data of GSA FSS sales and other GSA government-wide contract vehicles—which has become known as the Transactional Data Rule—is afflicted with three of the most fundament problems a procurement regulation can have.[1] One, it creates a significant, unnecessary, and underestimated burden on contractors—a burden that will be felt more acutely by small businesses. Two, the anticipated benefit to the government is poorly defined and is not likely to be realized. Three, the proposed Rule is subject to misuse that could result in considerable harm to contractors, particularly small business contractors.

While analyzing the proposed Rule, I reviewed many of the comments prepared by both industry groups and government agencies, and the concerns that I am expressing are shared by many of these parties. This is a rare example of a proposed Rule that is opposed by both the GSA Inspector General and industry associations.

II. The Rule Imposes a Significant, Underestimated, and Unnecessary Burden

GSA estimates that it will take six hours for a contractor to accomplish all tasks required to understand the reporting requirements, prepare its systems and personnel, and establish the procedures necessary for creating the required reports, and an average 31 minutes per month for ongoing reporting.[2] GSA does not provide sufficient detail to analyze how these estimates are flawed, but virtually every informed party who has weighed in on these estimates believes they are inaccurate.

The Small Business Administration's Office of Advocacy reports that small businesses and their representatives are concerned that GSA "under estimates the burden and resources."[3] The Council of

[1] 80 Fed. Reg. 11619 (March 4, 2015).
[2] 80 Fed. Reg. 11625.
[3] SBA Office of Advocacy Comments to GSAR Case 2013-G504: General Services Administration Acquisition Regulation; *Transactional Data Reporting,* at 3.

Defense and Space Industry Associations views the estimates as "grossly underestimated," as failing to "account for costly modifications to information systems that will be required to accurately and completely capture the data elements required by the rule" or to "sufficiently account for the time required to perform quality control on draft submissions and investigation into potential data anomalies that frequently arise with transactional data reporting."[4] Based on its experience with pre-award audits of contractor systems, the GSA Office of Inspector General "question[s] whether GSA's estimate of 6 hours per contractor to configure their systems for reporting is accurate" and "contend[s] the projected burden of monthly reporting as 0.52 hours per month is also understated."

Based on a survey of Coalition for Government Procurement's members, "small business respondents reported that it would take on average 232 hours" and "[l]arge and medium size contractors estimated that it would take on average 1192 hours" for the initial setup.[5] According to the Coalition, "small businesses reported that it would take 38 hours per month on average[,]" and "[l]arge and medium size businesses estimated that it would take an average of 68 hours per month" for the monthly reporting.

According to these comments, GSA likely failed to adequately consider one or more of the following requirements:

- the time to modify existing systems to accurately and completely capture the data required by the Rule;
- the time required to establish written procedures and protocols for the collection and reporting of the data;
- the time required for training company employees on the Rule, protocols, and their responsibilities in collecting and reporting the data;
- the time required to review, investigate and confirm the accuracy of the data.

GSA relies on a perceived offset of the burden by elimination of the burden for complying with the **Price Reductions** clause. GSA fails to recognize, however, the current burden on contractors also arises out of complying with the demands and obligations imposed by the submission of commercial sales practices data, which will remain and is expanded under the proposed Rule. GSA can require a contractor to submit updates to its commercial sales practices at any time upon request under the proposed Rule.[6] Industry views the offset as illusory in light of the continued commercial sales practices burden.

Based on my experience, even without the benefit of knowing precisely how and why, GSA's estimates are grossly inaccurate. Having worked with companies gathering information for commercial sales practices and other pricing disclosures, gathering, producing and ensuring the accuracy of such data will take signifi-

[4] CODSIA Comments to GSAR Case 2013-G504: General Services Administration Acquisition Regulation; *Transactional Data Reporting,* at 4.
[5] The Coalition for Government Procurement Comments to GSAR Case 2013-G504: General Services Administration Acquisition Regulation; *Transactional Data Reporting,* at 8.
[6] 80 Fed. Reg. 11624.

cantly more time and expense than estimated by GSA. In my view, a contractor cannot simply gather and report the information, but is well advised to ensure that the information gathered and reported is current, accurate and complete. Otherwise, the contractor will risk an allegation of fraud under the False Claims Act, as has been the case with essentially every other form of price or cost reports submitted by a contractor to the government. Importantly for this hearing, small businesses will bear the largest part of this burden—GSA estimated that out of 15,738 vendors holding contracts that would be subject to this Rule, 12,590 are small businesses. Small businesses are especially vulnerable to harm from these added expenses given that they often operate with fewer internal resources and lower margins than large businesses.

Industry also views the imposition of the burden as unnecessary because the data, or similar pricing data, is already available within the government. The purchasing agencies, of course, have access to the transaction data for their own transactions and could report this data to GSA. Existing GSA databases, such as GSA Advantage! permit price comparisons and commercial databases that we are all familiar with, provide commercial pricing data. Ironically, GSA rejected modifications to its own databases to fully capture this data as too costly and unreliable.[7]

III. The Anticipated Benefit is Poorly Defined, and Not Likely to be Realized

GSA anticipates that the transactional data will "improve GSA's ability to conduct meaningful price analysis and more efficiently and effectively validate fair and reasonable pricing" on its contracts and will permit government purchasers "to compare prices prior to placing orders."[8] GSA also recognizes a point very important to industry—that price paid is only of many "information points" in determining the best value to the government.[9] Equally important are other considerations, "such as total cost, desired performance levels, delivery schedule, unique terms and conditions, time considerations, and customer satisfaction."[10] We can also add customer service, product support services, warranty, and other terms to this list. GSA "envisions that this [price paid] information would be used as one information point in conjunction with [these] other considerations.[11] GSA and the proposed Rule fail to define how GSA or government purchasers will use the transactional data in conjunction with these other considerations to determine best value to the government.

The proposed Transactional Data Rule is not structured to permit buyers to fulfill GSA's "vision." Despite GSA's recognition of the importance of these other factors to determining best value to the government and taxpayers, the Rule provides no means to obtain this other equally important information. GSA does not even suggest any basis for a government purchaser to connect the prices

[7] ;80 Fed. Reg. 11625.
[8] 80 Fed. Reg. 11621.
[9] 80 Fed. Reg. 11623.
[10] *Id.*
[11] *Id.*

obtained through this Rule with this other equally important information and industry does not see any basis. So, according to GSA's own analysis, this burden imposed on contractors will provide the government with only one of the necessary information points—transactional price—without any means to obtain the other information points necessary to evaluate price. Without access to, and consideration of, this other important information, the price information is of little value at best and can be very misleading at worst. In short, the data required by this Rule will be of little or no value in determining best value to the government and taxpayers without these other terms and conditions applicable to the transaction, and the Rule provides no means to obtain this other information.

In my view, the inability of the Rule to capture these other nonprice factors could be especially harmful to small businesses. Small businesses often operate as value-added resellers or otherwise distinguish themselves in the competitive market based on the value they add to a transaction, such as customer and product service capability, that is not captured by transaction price. The Rule has no means to capture or account for this value. Thus, small businesses, as well as other contractors, are likely to assessed only by the price they offer and not the other value they bring to the transaction.

GSA attempts to gloss over this likely consequence to the competitiveness of small business by stating that "[t]he reduction in duplicative and inefficient procurement transactions removes barriers to entry into the Federal marketplace," primarily by reducing the administrative costs of holding multiple contracts.[12] This benefit, if realized, fails to consider that small businesses likely will be less competitive under these fewer contracts if best value decisions are based entirely on price.

IV. The Rule is Subject to Misuse that Could Result in Considerable Harm

Perhaps the most fundamental concern of industry is that the Rule is subject to misuse that could result in considerable harm to contractors. Again, small businesses would be especially vulnerable to this harm. Industry's fundamental concern is that GSA and government buyers will use the transactional data to drive down prices across all contractors to the lowest transactional price without consideration of the other terms and conditions that provide value to the government purchaser. Armed with this pricing data and having no access to the other value terms of the transaction—such as customer service, product service, delivery speed, and warranty—GSA will eliminate higher-priced, higher-value items and services from the contracts, or buyers will refuse to purchase items or services at a higher price regardless of the other value offered by the contractor along with the higher prices. Contractors that offer and rely on the other valuable terms and conditions will be unable to compete and will eventually leave the government market. In my view, small businesses are most vulnerable to this con-

[12] 80 Fed. Reg. 11622.

sequence because they often find it more difficult to compete purely on price.

This is not an unfounded concern. My colleagues and I have seen government purchasers ignore these other considerations and focus entirely on price repeatedly in contract negotiations, and GSA acknowledges that it has used transactional data, when available under strategically sourced contracts, to drive down prices further from the fair and reasonable prices established by competition.[13]

A second fundamental concern of industry, shared by small businesses, is whether the transactional data will be afforded adequate protection from disclosure by GSA and government buyers. Elements of the transactional data, including transactional prices and customer lists, are fundamental components of a contractor's business, pricing and proposal strategies for both the government and commercial market. Not surprisingly, industry views this information as competition sensitive and is concerned that contractors will be harmed in both the government and commercial market by disclosure to competitors. The Rule does not describe the procedures that will be used to obtain access to, disclose, or protect the data submitted by contractors. In the absence of any description of the protection of this highly sensitive data, industry is concerned that it will make its way into the hands of competitors either through Freedom of Information Act requests, disclosure during negotiations, breach of GSA's systems, or other unintended disclosures.

V. Conclusion

In my view, GSA has failed to consider the burden the proposed Rule will place on contractors, particularly small business contractors, the benefit to GSA and government purchasers of the proposed Rule, or the potential harm of misuse of the proposed Rule, especially to small businesses. Until GSA has addressed these fundamental issues, GSA should withdraw the proposed Rule.

[13] 80 Fed. Reg. 11621.



Statement of Lynn de Seve
President
GSA Schedules Inc.

On behalf of the
Security Industry Association

Before the

United States House of Representatives
Small Business Committee

Subcommittee on Contracting and Workforce

GSA's Proposed Rule on Transactional Data Rule and its Effect on Small Businesses

June 25, 2015

2360 Rayburn House Office Building

Good morning Chairman Hanna, Ranking Member Takai and distinguished members of the Subcommittee. I am Lynn de Seve, President of GSA Schedules Inc., a company that helps manufacturers, resellers and service providers entering the government marketplace understand and utilize the GSA Multiple Award Schedule Contract Program.

Today I am testifying on behalf of the Security Industry Association, where I chair the association's Procurement Policy Working Group. SIA is a non-profit international trade association representing nearly 600 companies that develop, manufacture and integrate electronic and physical security solutions.

We appreciate that the Committee is closely examining a proposal from the General Services Administration (GSA) that has been described as the most sweeping change to GSA policies in nearly 30 years.

The proposal would amend the General Services Administration Acquisition Regulation (GSAR) to include clauses that requiring vendors to report all transactional data for orders and prices paid by ordering activities through GSA contracting vehicles, and begin phasing out requirements under the price reduction clause (PRC).

We understand that for Federal Supply Schedules (FSS) programs the initial pilot will not include schedule 84 (law enforcement and security) and schedule 70 (IT programs), which encompass most security solutions offered by our members on the supply schedules. Under the proposal GSA would extend the new data reporting requirements to other schedules if the pilot results demonstrate that it is an "effective pricing model."

We share the agency's goal of providing products and services at the best value possible for government customers and the American people. However, we have significant concerns whether analysis of item level pricing could be successfully applied to complex engineered systems without compromising the best value proposition. The key advantage to federal customers for using GSA contracting vehicles is that contractors are vetted to ensure they can provide quality products at reasonable prices. In pursuit of that goal of ensuring that quality products are provided at reasonable prices, the PRC system currently in place does recognize the differences between the complex systems provided by different vendors because the comparison is to commercial customers of the same vendor.

Because of those differences between the products and systems provided by different vendors, comparisons between vendors often result in an "applies to oranges" comparison. For example, currently there are a multitude of GSA FSS contractors with the same part numbers on their contracts at different prices because of differing features, warranty periods or other value-added services. By providing a vertical price comparison the PRC system takes such differences into account, while a horizontal comparison does not.

Ultimately, if the objective of the proposal is simply to obtain lower pricing, and effectiveness is measured by the extent prices can be pushed down based on differences between offerors on individual items—there is a significant risk that high quality providers

of engineered systems may find it untenable to continue supplying government customers under FSS contracts. For example, it is important to differentiate schedule 84 from other schedules in that schedule 84 solutions are usually dealing with complex integrated life safety systems and that the overall best cost of the whole functioning system is more relevant than the individual price of the hundreds of items making up a customized system.

How GSA will utilize the information collected is also a key concern. In the proposal GSA states that the data will aid staff in conducting horizontal price comparisons, and that evaluation of prices paid information must be within the context of seeking to obtain best value for the taxpayer. It is intended to be "one information point" among others for consideration by the contracting officer, including total cost, performance level, delivery schedule, unique terms and conditions, etc.

Our members report inconsistent treatment under current horizontal price comparison methods, in some cases resulting in price considerations overriding others. So we are concerned whether the information would be evaluated properly in light of current practices. Further, FSS contractors frequently offer "spot pricing" and special discounts to federal customers, perhaps due to geographic location, ease of service or volume, and under the PRC they have the ability to explain such discounts. It is unclear from the proposal how such practices would not be counterproductive to sustain under the reporting requirements, unless special provisions or exceptions are provided.

The transactional data required to be reported under the proposal also appears to include a great deal of proprietary price information. In implementing any reporting requirement, GSA should provide a secure portal for transmission and storage of the data and ensure contracting officers are trained and equipped to handle their obligations to protect the information.

Based on input from our members, we also believe the administrative savings for contractors assumed in the proposed rule are vastly overestimated. First, initiation of monthly reporting of transactional data will require a significant change in IT infrastructure and staff training, and changes in staffing needs would be necessary in most cases to meet ongoing requirements. The data elements GSA initially listed as reportable are not necessarily collected by current contractor IT systems, which vary widely based on unique needs and business models, adding to the IT infrastructure changes required.

Moreover, most complex solution security providers/integrators financially measure their business on a project level basis, therefore requiring transactional data (line item) measurements in most cases would require significant and costly changes to business practices and IT infrastructure. These additional requirements could easily cost small businesses tens of thousands of dollars depending on the existing systems in place. Further, replacing the PRC's tracking customer requirement with transactional data reporting will not relieve schedule contract holders from the burden of maintaining commercial sales format information, which under the pro-

posed rule could be required by GSA at any time during the life of the contract. Ultimately, if transactional data reporting proves to be more burdensome than the PRC in practice, this could provide an incentive for small businesses to scale back their GSA FSS offerings.

The 2009 Multiple Award Schedules (MAS) Advisory Panel, on which SIA served, recommended replacing the PRC with a better check on pricing. We support fostering greater price competition at the contract and order level. However, due to the multiple variables involved in the evaluation and purchase of complex engineered systems, we question whether the GSA proposal would in fact be an improvement over the PRC.

The Security Industry Association is committed to supporting and improving GSA contract vehicles, to benefit U.S. businesses and taxpayers alike. We stand ready to answer any additional questions or provide any further information you may need. Thank you.

