

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 501, 515, 516, 538, and 552

[GSAR Change 74; GSAR Case 2013–G504; Docket No. 2014–0020; Sequence No. 1]

RIN 3090–AJ51

#### General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting

**AGENCY:** Office of Acquisition Policy, General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to include clauses that require vendors to report transactional data from orders placed against certain Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition Contracts (GWACs), and Governmentwide Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts.

Transactional data refers to the information generated when the Government purchases goods or services from a vendor. It includes specific details such as descriptions, part numbers, quantities, and prices paid for the items purchased. GSA has experimented with collecting transactional data through some of its contracts and found it instrumental for improving competition, lowering pricing, and increasing transparency. Accordingly, GSA will now test these principles on a broader base of its contracting programs. This move supports the Government's shift towards category management by allowing it to centrally analyze what it buys and how much it pays, and thereby identify the most efficient solutions, channels, and sources to meet its mission critical needs.

GSA will introduce a new Transactional Data Reporting clause to its FSS contracts in phases, beginning with a pilot for select Schedules and Special Item Numbers. Participating vendors will no longer be subject to the existing requirements for Commercial Sales Practices (CSP) disclosures and Price Reductions clause (PRC) basis of award monitoring, resulting in a substantial burden reduction. Stakeholders have identified the CSP and PRC requirements as some of the most burdensome under the Schedules program. These actions represent the most significant change to the Schedules program in the past two

decades. GSA has also created a Transactional Data Reporting clause for all new GWACs and Governmentwide IDIQ contracts and may apply the clause to any existing contracts in this class that do not contain other transactional data requirements.

**DATES:** This rule is effective June 23, 2016.

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#### I. Overview

The purpose of the Transactional Data Reporting rule is to transform price disclosure and related policies for GSA's Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition Contracts (GWACs), and Governmentwide Indefinite-Delivery, Indefinite Quantity (IDIQ) contracts, in order to improve the value taxpayers receive when purchases are made using these vehicles. The rule contains new clauses that require vendors to electronically report certain specific details on transactions under these GSA contracts, such as the descriptions of goods or services acquired, part numbers, quantities, and prices paid. GSA will use this added market intelligence to make smarter buying decisions and share the information with its agency customers so they can

also make smarter buying decisions when utilizing GSA's contract vehicles.

The rule also seeks to eliminate burden associated with current pricing disclosure and tracking requirements for thousands of entities, particularly small businesses that sell to agencies through the FSS program, the Government's largest purchasing channel for commercial products and services. In Fiscal Year 2015 alone, GSA's FSS contracts accounted for \$33 billion in sales, or more than 7 percent of all federal contract spending. Accordingly, the rule provides for a measured and managed phase-out of disclosures and tracking currently required by the Commercial Sales Practices (CSP) format and the Price Reductions clause (PRC), and the associated practice of negotiating pricing based on a model where the Government strives to secure the vendor's most favored pricing and maintain this position for the life of the contract. Instead, GSA is adopting a more dynamic market driven pricing model, where vendors submit prices paid by Government customers through a new Transactional Data Reporting clause<sup>1</sup> and the Government uses this data, along with other pricing information, to ensure a vendor's offered price is competitive relative to other vendors selling the same or similar items or services.

The Transactional Data Reporting clause is being implemented under the Schedules program on a pilot basis, to begin not less than 60 days after the publication date of the rule. Participation in the pilot will initially be voluntary for existing Schedule contract holders, and those who participate and comply with the Transactional Data Reporting requirements will not provide CSPs or be subject to the PRC basis of award tracking customer provision. The pilot will involve eight Schedules, including the information technology Schedule 70 and the Professional Services Schedule (Schedule 00CORP), and will reach approximately 30 percent of GSA's FSS contracts that account for more than 40 percent of GSA the FSS sales volume.

FSS contracts managed by the Department of Veterans Affairs are not included in the pilot and therefore will not be impacted by changes made by this rule to waive application of the CSP and PRC tracking customer provision.

For GSA's non-FSS Governmentwide vehicles, a Transactional Data Reporting

<sup>1</sup> GSAR clause 552.238–74, Industrial Funding Fee and Sales Reporting (Alternate I) (48 CFR 552.238–74 Alternate I).

clause<sup>2</sup> is immediately available. The new clause will be applied to solicitations for covered vehicles issued on or after the effective date of the rule. Existing contract vehicles containing other transactional data requirements have the option of incorporating the new clause through bilateral modifications.

The Transactional Data Reporting final rule follows a proposed rule published by GSA in the **Federal Register** at 80 FR 11619, on March 4, 2015.<sup>3</sup> The proposed rule sought to eliminate the PRC tracking customer provision but retained the Government's right to request CSP disclosures. In response to the proposed rule, many public commenters concurred with the need for a change to Schedules pricing policies, as well as the need for a model that leverages modern analytics and 21st century technology, but a number of commenters asserted that GSA's projections of burden reduction were significantly overstated. They explained that the continued requirement to maintain the CSP, coupled with the Government's right to regularly demand updated information, would significantly limit the relief contractors would realize from waiver of the PRC's tracking requirements. Other commenters raised concern that elimination of these historical pricing tools would thwart GSA's ability to gauge how its prices relate to commercial sales, and as a result, put the Government at a greater risk of paying less competitive prices for commercial goods and services.

After careful review of the public comments, which are discussed in greater detail in Section V of this document,<sup>4</sup> and additional deliberation with Government stakeholders, GSA has modified the proposed rule to authorize in the final rule the phased elimination of both the CSP and the PRC tracking customer provision, as opposed to just the PRC's tracking requirements, as the proposed rule would have provided. Phase-out of these requirements will be subject to the results of a pilot, as was discussed in the preamble to the proposed rule. However, the pilot has been broadened to be more reflective of the varied goods and services offered and sold through the Schedules program, and will allow GSA to more effectively evaluate the likely impact of

the intended transformation before making any final determinations.

Transactional Data Reporting is an attempt to embrace modern technology while moving away from outmoded practices. When first introduced in the 1980s, the CSP and PRC helped GSA and its customer agencies maintain advantageous pricing from original equipment manufacturers that held the vast majority of FSS contracts. However, changes in what the Government buys and shifts in the federal marketplace have eroded the effectiveness of these tools over time. Additionally, vendors repeatedly single out these pricing tools as among the most complicated and burdensome requirements in federal contracting. By contrast, Transactional Data Reporting provides a less burdensome alternative. The rule adds a total of \$15 million a year in costs for two classes of contracts, FSS (\$12 million a year) and non-FSS (\$3 million a year). FSS vendors are currently subject to the CSP and PRC reporting requirements that are being eliminated, resulting in a \$44 million a year burden reduction. Factoring in the \$12 million a year increase for new reporting requirements, this equates to a \$32 million a year net burden reduction for those FSS vendors (\$12 million – \$44 million = –\$32 million). However, non-FSS vendors are not subject to the CSP and PRC requirements and therefore are not receiving any burden reduction, but are seeing a \$3 million a year reporting burden for the new requirements. As a result, the net burden reduction reduces to \$29 million a year when accounting for all vendors subject to the rule (\$12 million + \$3 million – \$44 million = –\$29 million).

In all, the Transactional Data Reporting rule will result in an estimated burden reduction of \$29 million a year, which consists of a projected \$15 million a year compliance burden<sup>5</sup> minus the estimated \$44 million a year burden for the CSP and PRC requirements being waived for vendors participating in the FSS pilot.<sup>6</sup>

<sup>5</sup> See Section VIII.B, Annualized Public Burden Estimates.

<sup>6</sup> The CSP and PRC burden estimates are from Information Collection 3090–0235, FSS Pricing Disclosures. The annual public reporting burden for the CSP and PRC, excluding FSS vendors participating in the Transactional Data Reporting pilot, is \$57.66 million. If FSS pilot vendors were still subject to the CSP and PRC reporting requirements, the total annual public reporting burden would be \$101.69 million. The FSS pilot vendors' share of the total CSP and PRC reporting burden is based upon their share of the GSA FSS fiscal year 2015 sales volume, 43.2 percent. The annual \$44.03 million reporting burden reduction attributed to this rule is 43.2 percent of the \$101.69 million annual reporting burden if it were applied to the entire GSA FSS program. More information

Equally important, GSA's experience using horizontal pricing techniques, where it compares a vendor's offered price to those offered by other vendors, has proved to be a more effective model. This includes a growing body of experience with transactional data that points to improved acquisition outcomes, from smarter demand management, to better pricing and reduced price variation, and opportunities to develop more effective buying strategies. Section II.B of this document provides several examples of how the Government has successfully employed transactional data-fueled horizontal pricing techniques.

To ensure a measured and manageable transition to use of transactional data in lieu of the CSP and PRC, the final rule will be implemented through a multi-layered phase-in process built around the pilot as follows:

- First, the pilot will be evaluated against a series of metrics that will include, but not be limited to, changes in price, sales volume, and small business participation, as well as macro use of transactional data by category managers and teams to create smarter buying strategies such as consumption policies. GSA's Senior Procurement Executive will regularly evaluate progress against these metrics in consultation with the Administrator for Federal Procurement Policy and other interested stakeholders to determine whether to expand, limit, or discontinue the program. No expansion of the pilot or action to make Transactional Data Reporting a permanent fixture on the Schedules will occur prior to the careful evaluation of at least one year of experience with the pilot.

- Second, Schedules will enter the pilot on a rolling basis. At least thirty days prior to applying the pilot to a Schedule or Special Item Number, vendors will be given notice on Interact, GSA's platform for exchanging information with Schedule vendors.<sup>7</sup>

- Third, the new Transactional Data Reporting requirements will be mandatory only for new Schedule contracts awarded after the Schedule becomes subject to the pilot and at the time to extend the term of the Schedule contract. Initially, vendors holding existing contracts under pilot Schedules will be encouraged to enter via a bilateral contract modification so they can begin to take advantage of the

about Information Collection 3090–0235 can be found at <http://www.reginfo.gov/public> by searching "ICR" for "3090–0235".

<sup>7</sup> GSA Interact can be accessed at <https://interact.gsa.gov>.

<sup>2</sup> GSAR clause 552.216–75, Transactional Data Reporting (48 CFR 552.216–75).

<sup>3</sup> See GSAR Case 2013–G504; Docket 2014–0020; Sequence 1 (80 FR 11619 (Mar. 4, 2015)).

<sup>4</sup> See section V. Public Comments Overview and Discussion.

reduced burden of not having to comply with the CSP and PRC.

• Fourth, use of the transactional data will be introduced to federal buyers in stages, starting with category managers to provide them with insight into the assorted options available for satisfying common requirements and support smarter buying strategies, such as demand management, that promote the most efficient methods for meeting the Government's needs. The data will then be shared with FSS contracting officers, followed by agency ordering offices. Each of these buying groups will receive tailored training on the proper use of transactional data. In all cases, training will emphasize that prices paid information is just one information point that must be considered in conjunction with other factors such as total cost, quantity discounts, desired performance levels, unique terms and conditions or product attributes, delivery schedule, customer satisfaction, and other relevant information. Contracting officers will be encouraged to discuss with the offeror perceived variances between offered prices, transactional data, and existing contract-level prices, in order to evaluate whether other attributes (e.g., superior warranties, quantity discounts, etc.) justify awarding higher prices.

Finally, GSA is amending its pricing instructions in the General Services Administration Acquisition Manual (GSAM) to place greater emphasis on price analysis when negotiating prices with Schedule vendors and, in particular, the need to specifically consider (i) offered prices on FSS contracts or Governmentwide contracts for the same or similar items or services, (ii) prices paid, as it becomes available under this rule, and (iii) commercial data sources providing publicly available pricing information. The GSAM guidance will also reiterate that the contracting officer is responsible for ensuring pricing is fair and reasonable. Accordingly, if a contracting officer is unable to make this determination based on data available to them through GSA's tools or available commercial pricing information, they will retain the right, as the Federal Acquisition Regulation (FAR) has always provided, to request additional pricing information, such as data other than certified cost and pricing data.

A fuller discussion of these issues is presented in the following sections of this document, including GSA's analysis of alternatives, an overview of the rule's implementation, a discussion of public comments, and an examination of the reporting burden.

GSA's primary statutory authorities for the FSS program are 41 U.S.C. 152(3), Competitive Procedures, and 40 U.S.C. 501, Services for Executive Agencies. For GWACs, GSA is an executive agent designated by the Office of Management and Budget pursuant to 40 U.S.C. 11302(e). Furthermore, 40 U.S.C. 121(c) authorizes GSA to prescribe regulations for its other multi-agency contracts, including Governmentwide IDIQ contracts. Finally, this rule is included in GSA's report under Executive Order 13563, Improving Regulation and Regulatory Review, which directs each federal agency to consider "how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome." GSA's retrospective plan and updates to the plan can be found at [www.gsa.gov/improvingregulations](http://www.gsa.gov/improvingregulations).

## II. Background

### A. Category Management

Currently, the Federal Government acquires goods and services worth hundreds of billions in dollars through millions of individual transactions conducted by thousands of contracting units across hundreds of federal agencies and commissions. Most buying offices operate independently, conducting procurements without regard to the experiences of their counterparts. Functions such as industry outreach, market research, requirements development, negotiations, and contract award are repetitively performed, without coordination, across the acquisition landscape. Ongoing contract duplication leaves vendors navigating a diverse array of procedures and requirements, driving up administrative costs that ultimately manifest in higher prices.

In response, the Office of Federal Procurement Policy (OFPP) introduced a new vision for federal purchasing to fundamentally shift managing individual purchases and prices across thousands of procurement units to buying as one through category management.<sup>8</sup> The initiative entails grouping commonly-purchased goods and services into centrally coordinated categories. The Category Management Leadership Council (CMLC), established by OFPP, has defined the underlying

principles of category management, which are supported by this rule:

1. Optimizing existing contract vehicles (including replacement or elimination of duplicate or underperforming contracts) and driving more optimal use of contract vehicles.
2. Improving data collection efforts and analysis to drive improvements in categories of spend to increase savings and reduce duplication.
3. Leveraging industry/commercial intelligence and key partner relationships.
4. Maximizing customer insights and relationships to bring more spend under management and improve offerings and value.
5. Growing and sharing expertise.<sup>9</sup>

The CMLC has identified the following ten first-tier, or Level 1, categories that account for \$270 billion, or approximately two-thirds, of total contract spending:

- Information Technology (IT).
- Professional Services.
- Security and Protection.
- Facilities & Construction.
- Industrial Products and Services.
- Office Management.
- Transportation and Logistics Services.
- Travel and Lodging.
- Human Capital.
- Medical.<sup>10</sup>

To ensure Governmentwide harmonization, Level 1 categories will be led by a manager responsible for developing category-specific strategies. Within each Level 1 category are several Level 2 categories. For example, the Level 1 IT category includes Level 2 categories such as IT Software and IT Consulting. In concert with their respective category manager, Level 2 category teams will provide expert analysis, identify best-in-class sourcing solutions, and facilitate the dissemination of best practices, leading to smarter buying across the Government.<sup>11</sup>

For example, OFPP issued *Category Management Policy 15-1: Improving the Acquisition and Management of Common Information Technology: Laptops and Desktops*. In Fiscal Year 2014, agencies awarded more than 10,000 contracts and orders totaling \$1.1

<sup>9</sup> See "Government-wide Category Management, Guidance Document, Version 1.0," Office of Management Budget, May 2015, available at [https://hallways.cap.gsa.gov/information/Gov-wide\\_CM\\_Guidance\\_V1.pdf](https://hallways.cap.gsa.gov/information/Gov-wide_CM_Guidance_V1.pdf).

<sup>10</sup> See "Taking Category Management Government-Wide", January 7, 2015, available at <https://www.whitehouse.gov/blog/2015/01/07/taking-category-management-government-wide-0>.

<sup>11</sup> See "Government-wide Category Management, Guidance Document, Version 1.0," Office of Management Budget, May 2015, available at [https://hallways.cap.gsa.gov/information/Gov-wide\\_CM\\_Guidance\\_V1.pdf](https://hallways.cap.gsa.gov/information/Gov-wide_CM_Guidance_V1.pdf).

<sup>8</sup> See Office of Management and Budget memorandum, "Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation and Increase Savings", December 4, 2014, available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf>.

billion for laptops and desktops. In addition to contract duplication, price variation is also an issue since the prices paid for laptops of the same configuration could range from \$450 to \$1,300, or almost 300 percent. A category team led by the National Aeronautics and Space Administration (NASA), with subject matter experts from across the Government, was established and came up with the following requirements:

1. Standardize laptop and desktop configurations for common requirements. Through an extensive data analysis, the category team determined five standard configurations could satisfy 80 percent of the Government's laptop needs.

2. Reduce the number of contracts for laptops and desktops by consolidating purchasing and using a few number of high-performing—or best in class—contracts. With limited exceptions, all agencies are prohibited from issuing new solicitations for laptops and desktops, and civilian agencies must use NASA Solutions for Enterprise-Wide Procurement (SEWP), GSA Schedule 70, or National Institutes of Health (NIH) Chief Information Officer-Commodities and Solutions (CIO-CS).

3. Develop and modify demand management processes to optimize price and performance. Agencies are encouraged to adopt smarter buying strategies, such as adopting uniform refresh cycles and aggregating demand to support leveraged buying events.<sup>12</sup>

In another example, the Professional Services category team within GSA consolidated its offerings in two areas, the Professional Services Schedule (PSS) and the One Acquisition Solution for Integrated Services (OASIS) vehicle. The PSS is the result of combining eight separate Schedules under one umbrella, and in the process eliminating more than 700 duplicative contracts. This promotes efficiency in a number of ways. GSA can now focus its resources on improving the user experience under its contracts. Vendors, especially small businesses, now need to manage fewer contracts to fully access the professional services market, lowering their administrative burden. Finally, customers can meet their mission needs through a less fragmented purchasing channel. Likewise, OASIS provides flexibility for federal buyers seeking to streamline their acquisition strategies by

eliminating duplicative contracts. In Fiscal Year 2015, GSA supported the Army and Air Force in moving more than \$350 million in combined contract sales under the OASIS vehicle. OASIS has also allowed the Air Force to forgo extending five of its IDIQ contracts and the Department of Homeland Security has chosen OASIS as the successor to its Technical, Acquisition, and Business Support Services (TABSS) IDIQ contract.

The reduction in duplicative and inefficient contracts also removes barriers to entry into the federal marketplace, especially for small businesses. The Government Accountability Office (GAO) reports the costs of being on multiple contract vehicles ranged from \$10,000 to \$1,000,000 due to increased bid and proposal, and administrative costs.<sup>13</sup> Consequently, as category management streamlines procurement channels and vendors realize lower administrative costs, small businesses in particular will benefit from a leveling of the playing field. Small business participation is a key component of all category management strategies and care will be taken to ensure small businesses maintain access to the federal marketplace as duplicative contracts are eliminated.

Nevertheless, as category management continues to permeate the acquisition landscape, a critical ingredient for its success must be obtained: Transactional data.

#### *B. Necessity and Value of Transactional Data*

A critical component of category management, and smarter buying in general, is the availability of transactional data, which shows the details of purchases at the line-item level. It includes details such as descriptions, quantities, and prices paid for the items purchased. More than providing leverage for Government buyers to negotiate lower prices, transactional data underlies the business intelligence used to inform smarter buying strategies.

Transactional data provides the Government insight into its purchasing patterns, allowing it to identify the most efficient solutions, channels, and sources to meet mission critical needs. As previously noted, two key category management principles are optimizing existing contract vehicles and reducing

contract duplication.<sup>14</sup> With transactional data, the Government can analyze its consumption patterns, evaluate and compare purchasing channels, and identify best-in-class solutions. Thereafter, the Government can leverage its buying power to achieve taxpayer savings as it concentrates its purchases through fewer channels, which will in turn provide lower administrative costs for federal contractors.

Category managers will also use transactional data to develop demand management strategies that offer more optimal solutions for satisfying common requirements. For example, GSA's Domestic Delivery Services 2 (DDS2) program illustrates how transactional data can provide valuable insight into purchasing patterns and offer opportunities to develop more effective procurement strategies. In Fiscal Year 2009, 90 percent of revenue through the Domestic Delivery Services contracts was for more expensive, express air shipments, with less costly ground shipments accounting for the remaining 10 percent. However, after analyzing the actual buying practices through transactional data, the Government was able to change its consumption behavior to spend less by foregoing unnecessary express air shipments. By Fiscal Year 2015, air shipments shrank to 60 percent of revenue and 46 percent of total shipments, while ground shipments grew to 40 percent of revenue and 54 percent of total shipments.

Transactional data can also be leveraged to reduce price variation and lower costs. As exhibited by the 300 percent laptop price variance, Government buyers often rely on asymmetric information, which results from one party possessing better information than the other. In response, GSA began pioneering transactional data reporting on several of its contract vehicles. Combined with sourcing strategies and enhanced competition, GSA successfully instituted dynamic pricing models, where prices are continually adjusted based on transactional data, resulting in less variation and lower prices. Examples of this success include:

- Office Supplies 2 (OS2) and Office Supplies 3(OS3), with direct savings increasing from 10 percent in Fiscal Year 2010 to nearly 30 percent by Fiscal Year 2015.

- Federal Strategic Sourcing Initiative (FSSI) Wireless: This contract delivered

<sup>12</sup> See Office of Management and Budget Memorandum M-16-02, "Category Management Policy 15-1: Improving the Acquisition and Management of Common Information Technology: Laptops and Desktops", October 16, 2015, available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-02.pdf>.

<sup>13</sup> See GAO report GAO-10-367, "Contracting Strategies, Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contracts," April 2010, available at <http://www.gao.gov/new.items/d10367.pdf>.

<sup>14</sup> See "Government-wide Category Management, Guidance Document, Version 1.0," Office of Management Budget, May 2015, available at [https://hallways.cap.gsa.gov/information/Gov-wide\\_CM\\_Guidance\\_V1.pdf](https://hallways.cap.gsa.gov/information/Gov-wide_CM_Guidance_V1.pdf).

a 21 percent savings rate in its first year of operation (Fiscal Year 2014), which then increased to 26 percent by its second year. Other agencies that adopted FSSI Wireless achieved savings up to 38 percent from their previous contract prices while reducing the number of devices managed.

- Commercial Satellite

Communications (COMSATCOM): Customers save an average of 34 percent compared to GSA Schedule contract prices and better understand spend details. The availability of transactional data under COMSATCOM is already contributing to a reduction in duplicative contracts.

However, transactional data does not transform the federal acquisition system into a lowest-price procurement model. The Federal Acquisition Regulation (FAR) has a stated vision “to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives.”<sup>15</sup> The Government’s preference will continue to be “best value,” or as defined in the FAR, “the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.”<sup>16</sup> Transactional data is viewed in the context of each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information. Using and understanding the data will help inform requirements definition and reduce excess consumption.

### C. Imperative for Innovation

In Fiscal Year 2015, Government agencies ordered nearly \$40 billion in goods and services through GSA’s Federal Supply Schedules, Governmentwide Acquisition Contracts (GWACs), and Governmentwide Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts. GSA’s Federal Supply Schedule program, commonly known as GSA Schedules or Multiple Award Schedules (MAS), accounted for approximately \$33 billion of those sales, making it the Government’s most used commercial-item purchasing channel. Consistent with the broader effort to transform the federal marketplace, GSA is innovating its suite of Governmentwide contract vehicles.

While GSA has a number of policies in place to help its buyers and agency

users to secure best value for the taxpayer, and other regulatory actions in process to improve the Schedules program, two limitations in current pricing practices make achievement of this goal unnecessarily challenging: (1) Insufficient attention to “horizontal pricing”—the ability to compare one vendor’s pricing to that of other vendors—and (2) lack of visibility into prices paid by other customers.

*Insufficient Attention to Horizontal Pricing:* GSA currently relies on a “vertical” pricing model to establish price reasonableness on its FSS contracts, which entails comparing a contractor’s prices and price-related terms and conditions with those offered to their other customers. Through analysis and negotiations, GSA establishes a favorable pricing relationship in comparison to one of the contractor’s customers or category of customers.

Until recently, when vendors first submitted an FSS offer, minimal consideration was given to the relative competitiveness of the vendor’s prices to other vendors (*i.e.*, horizontal pricing). Instead, the FSS program primarily collects aggregate sales information through Commercial Sales Practices (CSP) disclosures, which include a broad disclosure of discounts vendors offer to commercial customers for similar products and services.<sup>17</sup> GSA’s negotiation objective is to achieve a company’s best price—*i.e.*, the price given to its most favored customer—who buys in quantities and under conditions similar to those of the Government.<sup>18</sup> Contractors are then required, under the Price Reductions clause (PRC), to monitor their pricing over the life of the contract and provide the Government with the same price reductions that they give to the class of the contractor’s commercial customers upon which the original contract award was predicated.<sup>19</sup> In addition to the “tracking customer” requirement, the PRC allows vendors to voluntarily reduce prices to the Government and for the Government to request a price reduction at any time during the contract period, such as where market analysis indicates that lower prices are being offered or paid for the same items under similar conditions.

Pricing disclosures, such as the CSP and its predecessors, along with the PRC, have served as the bedrock of the

Schedules program pricing approach for at least as far back as the 1980s. With limited other means of data collection available, they served as a way to ensure fair and reasonable pricing through the life of a contract with the goal of achieving most favored customer pricing. For many years, CSP disclosures and the PRC tracking customer feature were critical mechanisms for achieving advantageous pricing from original equipment manufacturers (OEMs) that held the vast majority of FSS contracts. However, these tools predate the Federal Acquisition Streamlining Act of 1994 (FASA)<sup>20</sup> and the subsequent procedures in FAR part 12, which aim to “establish policies more closely resembling those of the commercial marketplace.”<sup>21</sup> For instance, FASA required the Government to only ask for information other than cost and pricing data as needed.

Moreover, a number of factors have eroded the effectiveness of these tools over time, including: (i) The significant growth of contracts held by resellers with little or no commercial sales against which to negotiate most favored customer pricing; (ii) the prevalence of sales for commercial-off-the-shelf products or other commercial items for which the Government is not a market driver; and (iii) the fact that these practices tie pricing for reductions to sales of single items and play little role in blanket purchase agreements and other higher-volume leveraged buying by agencies to achieve greater savings and reduce administrative costs.

When it comes to contract administration, the Government, and other customers in the category to which the Government is most typically aligned under the PRC, tends to receive voluntary price reductions from the vendor as a result of general market forces. In other words, prices are reduced under the voluntary provisions of the PRC as a result of competitive market forces, not under the mandatory tracking customer provisions.

Vendors have also singled out these pricing tools as among the most complicated and burdensome requirements in federal contracting, including during a 2014 national online dialogue sponsored by the Chief Acquisition Officers Council to identify ways of improving how the Government does business with its contractors. A number of contractors contended that the one-size-fits all application of these tools to all Schedules runs counter to

<sup>17</sup> General Services Administration Acquisition Regulation section 515.408(a)(2) (48 CFR 515.408(a)(2)).

<sup>18</sup> General Services Administration Acquisition Regulation section 538.270 (48 CFR 538.270).

<sup>19</sup> General Services Administration Acquisition Regulation clause 552.238–75 (48 CFR 552.238–75).

<sup>15</sup> Federal Acquisition Regulation section 1.102 (48 CFR 1.102).

<sup>16</sup> Federal Acquisition Regulation section 2.101 (48 CFR 2.101).

<sup>20</sup> Public Law 103–355.

<sup>21</sup> Federal Acquisition Regulation section 12.000 (48 CFR 12.000).

the spirit of the FASA and its implementing policies in FAR part 12, such as by requesting detailed pricing information only after determining that more readily available data is not sufficient to establish fair and reasonable pricing. Some noted that the proliferation of Schedule resellers has occurred, in part, out of an effort by OEMs to shield them from what they see as an overly complex and burdensome process that has created a punitive relationship between the Government and its suppliers.

GSA recognized the deficiencies of its vertical pricing model and has begun implementing horizontal pricing initiatives for its FSS contracts. For example, over the past year GSA has launched the Competitive Pricing Initiative (CPI) and the Contract Awarded Labor Category Tool (CALC):

- CPI aims to identify and address price variability across the Schedules program. The initiative is built around a Formatted Product Tool (FPT) that identifies pricing outside a range determined to be acceptable for identical items; vendors whose prices exceed the acceptable range are then notified of their comparative pricing. Currently, this initiative applies only to products, while services will be addressed at a later date. Moving forward, FSS contracting officers will utilize available horizontal pricing data from the FPT for certain categories of supplies when conducting price analysis, in addition to other price analysis techniques already employed in compliance with the FAR and GSAR. The FSS contracting officer's final determination will also take into account non-price elements, such as materially different terms, quantities, and market and economic factors. CPI will also allow FSS contracting officers to identify where a vendor's offered pricing is outside the range determined to be acceptable for identified products and services. After a vendor has been notified, they will be given the opportunity to use this market intelligence to make their offered pricing more competitive. Equally important, vendors will have the chance to advise if they have a unique value proposition, such as speedier deliveries, guarantees, or quantity that warrants a higher price.

- CALC is a market research tool that searches a database of awarded FSS contract prices for 48,000 labor categories from more than 5,000 FSS contracts under the Professional Services Schedule. Rather than sifting through contract files or searching GSA Advantage!® for comparable pricing, Government contracting professionals

can now use CALC to return a multitude of comparable contract prices within a matter of seconds. Additionally, these search results can be filtered by relevant criteria such as years of experience and education level. Over time, greater enhancements are anticipated, such as adding geographic filters.

GSA has made tremendous progress on the horizontal price analysis front over the past year, but tools such as CPI and CALC only support segments of the FSS program and only analyze contract-level prices. Although GSA establishes fair and reasonable prices on its Governmentwide contracts, the program is designed with the intent of ordering activities negotiating further discounts at the time of the instant requirement. While in many respects this is a significant strength of the program, at times, the absence of good pricing information contributes to negative perceptions of the program, and as result, contract duplication. Consequently, transactional data is needed to perform a horizontal analysis of the actual prices paid for goods and services acquired through GSA contract vehicles.

*Lack of transparency in prices previously paid:* The FAR has long emphasized the need for contracting officers to conduct price analysis as part of their responsibility to determine offered prices are fair and reasonable. Price analysis requires contracting officers to obtain and analyze data on the prices at which the same or similar items have been sold, but until recently, little effort was made to share prices previously paid by agencies throughout the Government. As a result, contracting officers generally lack critical information when making these important determinations.

Though the specifics vary, several of GSA's non-FSS contracts now require vendors to report transactional data, including Alliant, Alliant Small Business, Connections II, Custom SATCOM Solutions (CS2), Custom SATCOM Solutions—Small Business (CS2—SB), Office Supply Third Generation (OS3), and One Acquisition Solution for Integrated Services (OASIS). However, these requirements are applied through their respective solicitations without the benefit of a dedicated, standard GSAR clause, resulting in inconsistency.

Continuous innovation is imperative for the FSS program. In 2010, the Multiple Award Schedule (MAS) Blue Ribbon Advisory Panel, which included representatives from the Government's largest buying agencies—the Department of the Defense, Department of Homeland Security, Department of

the Interior, Department of the Treasury, and Department of Education—and industry, recommended that “the GSA Administrator remove the Price Reduction Clause from the MAS program supply contracts for products in phases as the GSA Administrator implements recommendations for competition and price transparency at the Schedule contract level and the order level.” That same year, the Government Accountability Office (GAO) issued a report recommending GSA collect “prices paid” data on FSS orders and make this information available to FSS contract negotiators and customer agencies.<sup>22</sup> Over the next few years, GSA explored alternatives for collecting transactional data through the FSS program before ultimately deciding to pursue incorporating a transactional data reporting requirement in its FSS contracts.

#### *D. Transactional Data Reporting: Proposed Rule and Public Meeting*

On March 4, 2015, GSA issued a proposed rule to require transactional data reporting on its FSS contracts and non-FSS contract vehicles—Governmentwide Acquisition Contracts (GWACs) and Governmentwide Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts. The rule proposed for non-FSS contracts would have been immediately implemented but rolled out on a pilot basis for the FSS program under select Schedules. For FSS contracts, the requirement would be paired with an alternate Price Reductions clause that did not include the tracking customer feature, although GSA would have had the right to request CSP disclosures at any time.<sup>23</sup>

On April 17, 2015, a public meeting was held at GSA headquarters in Washington, DC, to discuss the proposed rule. Nearly 200 companies, organizations, Government agencies, and interest groups were represented. In general, industry representatives opposed the transactional data reporting requirement but supported the proposed PRC changes. Government procurement representatives supported the rule, while oversight entities expressed concern with the potential reporting burden and PRC changes.<sup>24</sup>

<sup>22</sup> See U.S. Government Accountability Office report GAO-10-367, “Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contracts,” April 2010, available at <http://www.gao.gov/products/GAO-10-367>.

<sup>23</sup> See GSAR Case 2013-G504 (80 FR 11619 (Mar. 4, 2015)).

<sup>24</sup> See the public meeting transcript at <http://www.regulations.gov/#/documentDetail;D=GSA-GSAR-2014-0020-0024>.

Following an extension to the public comment period,<sup>25</sup> GSA received 26 comment letters on the proposed rule, including comments from industry associations, contractors, individuals, Government stakeholders, and other interested groups.

### III. Final Rule Overview

GSA is adopting new requirements for transactional data reporting on its FSS, GWAC, and Governmentwide IDIQ vehicles:

- For FSS contracts, a new transactional data reporting clause, GSAR Alternate I, 552.238–74 Industrial Funding Fee and Sales Reporting (Federal Supply Schedule), will be paired with changes to FSS pricing disclosure requirements. Specifically, FSS vendors subject to the Transactional Data Reporting rule will no longer provide CSP disclosures and will no longer be subject to the PRC tracking customer provision. These changes will be initially implemented for select Schedules and Special Item Numbers on a pilot basis.

- For GWACs and Governmentwide IDIQs, a new clause, GSAR 552.216–75 Transactional Data Reporting, will apply to all new GWACs and Governmentwide IDIQs and may be applied to any existing contracts in this class that do not contain other transactional data clauses.

#### A. Summary of Changes Made at the Final Rule Stage

The following is a summary of changes made in response to public comments regarding the proposed rule:

**CSP Disclosures:** FSS vendors will no longer provide CSP disclosures for contracts subject to the new Transactional Data Reporting clause, 552.238–74 Alternate I. This is in addition to pairing the new reporting clause with the new Price Reductions clause (552.238–75) Alternate II, which does not include the basis of award tracking customer requirement. The GSAR sections requiring CSP disclosures and clauses 552.238–75 and 552.238–75 Alternate I (the PRC tracking customer provision) have been updated to exclude contracts subject to the new FSS reporting clause, 552.238–74 Alternate I.

GSA has also concluded the horizontal pricing ability afforded by Transactional Data Reporting would not only exceed the PRC tracking customer provision benefits, it could also alleviate the need for CSP disclosures when

combined with automated commercial data sources, new data analytic tools, and improved price analysis policy. For the Schedules pilot, pairing Transactional Data Reporting with a removal of CSP disclosures and the PRC tracking customer provision will result in an average annual burden reduction of approximately \$32 million for participating FSS vendors.<sup>26</sup> Furthermore, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government's burden by about \$3 million a year.<sup>27</sup>

**Data Reporting and Fee Remittance Timelines:** Both Transactional Data Reporting clauses (552.216–75 and 552.238–74 Alternate I) now require vendors to report transactional data within 30 calendar days after the last day of the calendar month. Additionally, the non-FSS clause (552.216–75) now states a GSA representative will provide the contractor with specific written procedural instructions on remitting the Contract Access Fee (CAF) within 60 days of award or inclusion of this clause in the contract, including the deadline by which the contractor must remit the CAF, although the deadline specified in the written procedural instructions will be no less than 30 days after the last day of the month. Previously, GSA proposed for contractors subject to both clauses to report transactional data within 15 calendar days after the end of the calendar month. Non-FSS contractors were to remit any CAF due within 15 calendar days after the end of the calendar month. FSS contractors were to remit any Industrial Funding Fee (IFF) due within 30 calendar days after the end of each quarter.

GSA increased the monthly reporting window from 15 to 30 calendar days in response to comments stating the proposed 15-day window did not allow enough time to compile, analyze, and report transactional data. GSA opted to not require monthly IFF remittance because doing so would

<sup>26</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>27</sup> \$3 million is the result of the Government's annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).

disproportionately harm small businesses, many of whom remit fees based on accrued billings before they actually receive payments from their Government customers. The non-FSS clause (552.216–75) does not specify CAF remittance frequency—those instructions will be provided within 60 days after award or inclusion of the clause in the contract—but ensures contractors have at least 30 days after the last day of the month to remit the CAF.

**Clause Language:** GSA made several revisions to the clause language for 552.216–75 and 552.238–74 Alternate I, including a data element “fill-in” for additional elements that requires approval from GSA's Senior Procurement Executive.

**Paperwork Reduction Act:** GSA increased its Transactional Data Reporting burden estimates. For the proposed rule, GSA's public burden estimates included an average initial setup time of 6 hours and average ongoing monthly reporting times ranging from 2 minutes to 4 hours, depending on a vendor's sales volume.<sup>28</sup> In contrast, the final rule burden estimates include initial average setup times of 8 hours for vendors using manual systems and 240 hours for vendors using automated systems, and average ongoing monthly reporting times ranging from 15 minutes to 48 hours, depending on a contractor's sales volume and reporting system type.

#### B. Alternatives Analysis

GSA determined it is necessary to obtain and analyze transactional data for purchases made through its contract vehicles in order to support the Government's category management vision and improve acquisition outcomes in general. However, following the April 17, 2015 public meeting and subsequent receipt of the public comments, GSA was compelled to further evaluate the spectrum of alternatives for Transactional Data Reporting, ranging from withdrawing the rule in favor of different approaches for obtaining the data to applying the new reporting clauses without corresponding changes to existing disclosure requirements. Ultimately, the decision to proceed hinged on considerations including, but not limited to, alternatives for collecting transactional data; the burden associated with reporting transactional data; opportunities to reduce burden through changes to existing disclosure requirements, and the associated

<sup>25</sup> See GSAR Case 2013–G504 (80 FR 25994 (May 6, 2015)).

<sup>28</sup> See GSAR Case 2013–G504; Docket 2014–0020; Sequence 1 [80 FR 11619 (Mar. 4, 2015)].

impacts of those changes; effects on small businesses; and the benefits of collecting transactional data for non-standard products and services.

The Initial Regulatory Flexibility Analysis published with the proposed rule included an evaluation of alternatives for obtaining transactional data—internal applications; GSA ordering platforms such as eBuy and GSA Advantage!®; the SmartPay credit card purchase program; and upgrades to the Federal Procurement Data System. GSA previously concluded these options would not provide the breadth of data needed to support the Government's objectives or would be unable to do so in the foreseeable future. Since the publication of the proposed rule, GSA reevaluated those alternatives and reached similar conclusions. Additionally, the Government's electronic invoicing initiative<sup>29</sup> was assessed as a potential alternative. However, following meetings regarding electronic invoicing implementation with representatives from the Department of Defense, Department of Energy, Department of Transportation, Department of Treasury, and Department of Veterans Affairs, it was determined these electronic invoicing platforms will not provide a Governmentwide transactional data reporting solution in the near term. Consequently, GSA continued to evaluate solutions that relied on contractor-provided transactional data.

The most common concern, in terms of the number of respondents to the proposed rule, regarded the associated burden of reporting transactional data. In general, commenters felt the burden was underestimated and/or the requirement was too burdensome. To address the concerns with its Transactional Data Reporting burden estimates, GSA reevaluated its methodology and significantly increased its burden estimates.<sup>30</sup> These higher burden projections were a significant concern and reinforced the need to couple Transactional Data Reporting with other significant forms of burden reduction.

A notable concern expressed by industry stakeholders was the retention, and potential increase, of CSP disclosures. GSA noted in the proposed rule it “. . . would maintain the right

throughout the life of the FSS contract to ask a vendor for updates to the disclosures made on its commercial sales format (which is used to negotiate pricing on FSS vehicles) if and as necessary to ensure that prices remain fair and reasonable in light of changing market conditions.”<sup>31</sup> In response, industry stakeholders indicated retaining CSP disclosures would undercut any burden reduction achieved by eliminating the PRC tracking customer requirement. Specifically, respondents were concerned CSP disclosures will still force them to monitor their commercial prices, which ultimately causes the associated burden for both disclosure requirements.

In the summer of 2015, GSA also began preparing its request to renew the PRC information collection, which is identified under OMB Control Number 3090–0235. The Paperwork Reduction Act requires federal agencies to seek public comment on proposed collections of information from the public and then submit an information collection request (ICR) to the OMB Office of Information and Regulatory Affairs (OIRA). After receiving clearance to proceed, federal agencies must seek public comment and OIRA approval for renewal of these information collections, typically every three years. Since the PRC information collection was last approved in 2012, GSA needed to begin preparing its request to renew the information collection shortly after publishing the Transactional Data Reporting proposed rule. While GSA would have proceeded with a renewal request regardless, the timing did allow for the consideration of the Transactional Data Reporting comments. In particular, GSA agreed with the general industry comment that burdens of the PRC and CSP are related and therefore decided to include CSP disclosure burden estimates with the PRC ICR. GSA also opted to change the name of Information Collection 3090–0235 from “Price Reductions Clause” to “Federal Supply Schedule Pricing Disclosures” to more accurately reflect the scope of the information collected.

Following two **Federal Register** notices requesting comments on the FSS Pricing Disclosures ICR,<sup>32</sup> GSA increased its annual burden estimates for GSA FSS vendors, including those who would participate in the Transactional Data Reporting pilot, from

\$59 million<sup>33</sup> to \$102 million.<sup>34</sup> Yet, Transactional Data Reporting alleviates the need for these FSS pricing disclosures when combined with automated commercial data sources, new data analytic tools, and improved price analysis policy. As a result, GSA decided to pair Transactional Data Reporting with the removal of CSP disclosures and the PRC tracking customer provision, resulting in an average annual burden reduction of \$32 million for participating FSS vendors.<sup>35</sup> Furthermore, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government's burden by about \$3 million a year.<sup>36</sup>

Streamlining the existing pricing disclosure requirements is particularly beneficial for small businesses. The current CSP and PRC disclosure requirements are constant, meaning vendors, especially those with a higher number of FSS contract offerings, must bear the burden even if they have little to no sales through their FSS contracts. Thus, small businesses are disproportionately impacted because they account for the bulk of lower volume contracts. Moreover, small businesses, which generally have fewer resources to devote to contract management, will no longer be subjected to the complex CSP and PRC pricing disclosure requirements.

<sup>29</sup> The 2012 information collection did not provide a cost burden estimate, but if the same hourly rate (\$68) was applied to the 2012 time burden, the 2012 cost burden would have been \$59,086,560.

<sup>30</sup> The annual public reporting burden for the CSP and PRC, excluding FSS vendors participating in the Transactional Data Reporting pilot, is \$57.66 million. If FSS pilot vendors were still subject to the CSP and PRC reporting requirements, the total annual public reporting burden would be \$101.69 million. The FSS pilot vendors' share of the total CSP and PRC reporting burden is based upon their share of the GSA FSS fiscal year 2015 sales volume, 43.2 percent. The annual \$44.03 million reporting burden reduction attributed to this rule is 43.2 percent of the \$101.69 million annual reporting burden if it were applied to the entire GSA FSS program. More information about Information Collection 3090–0235 can be found at <http://www.reginfo.gov/public> by searching “ICR” for “3090–0235”.

<sup>31</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>32</sup> \$3 million is the result of the Government's annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).

<sup>29</sup> See Office of Management and Budget memorandum M–15–19, “Improving Government Efficiency and Saving Taxpayer Dollars Through Electronic Invoicing”, July 17, 2015, available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-19.pdf>.

<sup>30</sup> See Section VIII.B for a discussion of the burden estimates in accordance with Paperwork Reduction Act requirements.

<sup>31</sup> See GSAR Case 2013–G504 (80 FR 25994 (May 6, 2015)).

<sup>32</sup> See 80 FR 72060 (Nov. 18, 2015) and 81 FR 21346 (Apr. 11, 2016).



Unlike the existing CSP and PRC disclosure requirements, Transactional Data Reporting imposes a progressive burden—one that increases with a vendor's sales volume. Namely, monthly reporting time will increase with a vendor's applicable sales volume, as vendors with lower to no reportable sales will spend little time on monthly reporting, while those businesses with more reportable sales will face a higher reporting burden. Likewise, setup costs will be a major driver of the new reporting burden, but vendors with little to no activity on their FSS contracts will likely forgo investments in new reporting systems because the reporting burden will not be significantly more than that of the current quarterly sales reporting requirements. Thus, tying the burden to sales volume is particularly beneficial for small businesses, as they hold 80 percent of the total contracts but account for only about 39 percent of the sales.<sup>37</sup>

Finally, consideration was given to whether Transactional Data Reporting should be applied to all of GSA's Governmentwide contract vehicles. Most of GSA's non-FSS Governmentwide vehicles currently have transactional data reporting requirements that exceed those created through this rule, but the new applicable Transactional Data Reporting clause (GSAR clause 552.216–75) will provide a consistent reporting mechanism for future non-FSS vehicles, or for current vehicles that adopt the new clause. For FSS contracts, an analysis was conducted to determine whether Transactional Data Reporting should be considered for all FSS contracts, or only those that include products or services that would allow straightforward comparisons, such as commodities with standard part numbers. The second-most common comment area questioned the utility of collecting transactional data for Schedules where “apples-to-apples” comparisons cannot be made, such as contracts for professional services and complex solutions. While transactional data is most useful for price analysis when comparing like items, it does not mean the data is not useful when perfect comparisons cannot be made. Government buyers and FSS contracting officers will use the data for price analysis and market research, and category managers will use the data for consumption analysis to form demand management strategies, regardless of whether the data can be used for perfect

comparisons. An example is the ability to compare labor rates across contract vehicles, which is beginning to bear fruit in the form of reduced contract duplication. Consequently, GSA decided not to limit the prescription of Transactional Data Reporting to certain Schedules or Special Item Numbers.

#### IV. Final Rule Implementation

##### A. GWAC and Governmentwide IDIQ Contracts

GSAR clause 552.216–75 Transactional Data Reporting is immediately available for GSA's GWACs and non-FSS Governmentwide IDIQ contracts. It will be applied to all new vehicles in this class—those vehicles with solicitations issued on or after the effective date of this rule—but the current contract vehicles with alternative transactional data provisions may opt to continue using existing reporting requirements. The clause requires contractors to report eleven standard data elements and includes a “fill-in” for additional data elements. However, GSA's Senior Procurement Executive must approve any data elements beyond the standard elements in order for them to be included with a tailored version of the clause. The determination regarding additional data elements will consider the benefits, alternatives, burden, and need for additional rulemaking.

##### B. FSS Contracts

The new FSS Transactional Data Reporting clause (GSAR clause 552.238–74, Alternate I), along with the corresponding changes to existing pricing disclosure requirements, will be introduced in phases, beginning with a pilot for select Schedules and Special Item Numbers (SINs). The clause requires vendors to report eleven standard data elements and includes a “fill-in” for additional data elements. However, GSA's Senior Procurement Executive must approve any data elements beyond the standard elements in order for them to be included with a tailored version of the clause. The determination regarding additional data elements will consider the benefits, alternatives, burden, and need for additional rulemaking.

The pilot will begin no sooner than July 1, 2016—details will be released at a later date—and will include the following Schedules and SINs:

- Schedule 03FAC, Facilities Maintenance and Management: All SINs.
- Schedule 51 V, Hardware Superstore: All SINs.
- Schedule 58 I, Professional Audio/Video, Telemetry/Tracking, Recording/

Reproducing and Signal Data Solutions: All SINs.

- Schedule 72, Furnishing and Floor Coverings: All SINs.

• Schedule 73, Food Service, Hospitality, Cleaning Equipment and Supplies, Chemicals and Services: All SINs.

- Schedule 75, Office Products: All SINs.

• Schedule 00CORP, The Professional Services Schedule: Professional Engineering Services (PES) SINs.

- Schedule 70, General Purpose Information Technology Equipment, Software, and Services: SINs 132 8 (Purchase of New Equipment); 132 32, 132 33, and 132 34 (Software); and 132 54 and 132 55 (Commercial Satellite Communications (COMSATCOM)).

The new reporting clause and corresponding pricing disclosure changes will be applied to newly-awarded contracts for the applicable Schedules/SINs. Existing contracts for the pilot Schedules/SINs will adopt the new reporting clause and corresponding pricing disclosure changes after the execution of a bilateral modification between the vendor and Government.

For the two pilot Schedules that include only select SINs—The Professional Services Schedule and Schedule 70—contracts subject to the Transactional Data Reporting that include those SINs will report transactional data for all SINs under those contracts. For example, a vendor holding a Schedule 70 contract consisting of SINs 132 33 (Perpetual Software License), 132 34 (Maintenance of Software as a Service), and 132 51 (Information Technology Professional Services) will be subject to the Transactional Data Reporting pilot because of the inclusion of Software SINs 132 33 and 132 34. However, this vendor will report transactional data for all SINs—132 33, 132 34, and 132 51. Likewise, vendors holding Professional Services Schedule contracts that include a Professional Engineering Services SIN in conjunction with other SINs under that Schedule (*e.g.*, Environmental Services, Mission Oriented Business Integrated Services, *etc.*) will report transactional data for all SINs under the contract.

The initial pilot will reach approximately 30 percent of GSA's FSS contracts, including Schedules/SINs covering a wide array of goods and services that account for approximately 43 percent of the GSA Schedules sales volume. This scope will enable GSA to evaluate the effectiveness of Transactional Data Reporting before deciding whether to expand, limit, or discontinue the program. Evaluation

<sup>37</sup> Based on fiscal year 2015 Federal Supply Schedule contract data.

metrics will include, but not be limited to, changes in price, sales volume, and small business participation, as well as macro use of transactional data by category managers and teams to create smarter buying strategies such as consumption policies. GSA's Senior Procurement Executive will regularly evaluate progress against these metrics in consultation with the Administrator for Federal Procurement Policy and other interested stakeholders to determine whether to expand, limit, or discontinue the program. No expansion of the pilot or action to make Transactional Data Reporting a permanent fixture on the Schedules will occur prior to the careful evaluation of at least one year of experience with the pilot.

### C. Systems

Vendors subject to the new Transactional Data Reporting clauses will be required to electronically report the data, as outlined in the applicable clauses, thirty (30) days after the end of the preceding month; reporting instructions will be posted on the Vendor Support Center Web site (<https://vsc.gsa.gov>). To facilitate Transactional Data Reporting, GSA is launching a new portal that has several differences from the existing 72A Sales Reporting System,<sup>38</sup> including the following:

- A single sign-on for all contracts. The current system requires a different sign-on for each contract.
- Electronic Data Interchange (EDI) upload capability.
- A spreadsheet template that can be downloaded, filled, and uploaded in lieu of manual data entry.
- Vendors with \$0 sales during a reporting period can now click a single field to complete the report, as opposed to the current 72A requirement of submitting \$0 for each SIN.

The new FSS Transactional Data Reporting clause (552.238–74 Alternate I) requires monthly reporting but quarterly fee remittance, which will also be processed through the new portal. As sales are reported, the portal will calculate a running balance and remind users to submit payment within 30 days after the end of the quarters ending March 31, June 30, September 30, and December 31. However, vendors will have the option to pay-as-you-go, meaning they can voluntarily remit the fees as sales are reported, rather than doing so on a quarterly basis. Portal

instructions and training will be posted to GSA's Vendor Support Center.<sup>39</sup>

Transactional data collected through the portal will be accessible only by authorized users and protected in accordance with GSA's information technology security policies. Additionally, GSA intends to share transactional data to the maximum extent allowable to promote transparency and competition while respecting that some data could be exempt from disclosure. Accordingly, a public data extract, containing information that would otherwise be releasable under the Freedom of Information Act (FOIA), will be created for use by the general public;<sup>40</sup> details about the public data extract will be released through a forthcoming notice in the **Federal Register**. The data released to the public will provide valuable market intelligence that can be used by vendors for crafting more efficient, targeted business development strategies that incur lower administrative costs. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties.

### D. Procedures

GSA, like other agencies, will use transactional data to support its contracting officers in making smarter decisions when purchasing goods and services. However, GSA's FSS contracting officers will also take this data into consideration when awarding FSS contracts and evaluating requests to adjust pricing and add new items to current contracts. As a result, GSA is developing training for Government buyers and implementing new procedures for its FSS contracting officers. Training and guidance deployed in connection with this rule emphasizes the importance of considering the best overall value (not just unit price) for each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information.

**Training:** GSA is updating relevant courseware on the Federal Acquisition Institute (FAI) and Defense Acquisition University (DAU) portals to educate both customers and GSA contracting officers on how to use the data. Similarly, the courseware on how to use the FSS program and other non-FSS

GWACs and multi-agency IDIQs will be updated to educate customers on the new requirements and how they can use the data collected to buy smarter. The external courseware will also highlight the additional value transactional data offers to GSA's FSS and non-FSS contracting programs and emphasize it must be viewed in the context of each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information.

Additionally, FAS also has an internal training course aimed at GSA contracting officers awarding and administering FSS contracts—this course will be updated to educate contracting officers on how to conduct analysis on transactional data, as well as how to use these analyses to achieve better pricing on the contracts.

**Guidance:** FSS contracting officers follow policy from GSA's supplement to the FAR, the General Services Administration Acquisition Manual (GSAM), when evaluating offers for FSS contracts. This includes the GSAR, GSA's regulatory FAR supplement, and non-regulatory acquisition policy, commonly referred to as GSAM guidance.<sup>41</sup> Regulations, such as the GSAR, require formal rulemaking, while non-regulatory policy, like GSAM guidance, does not.<sup>42</sup> For example, GSA contracting officer responsibilities are found at the non-regulatory GSAM 501.602,<sup>43</sup> while the regulatory CSP instructions are found at GSAR 515.408.<sup>44</sup>

In addition to the regulatory changes made through this final rule, non-regulatory instructions for GSA category managers and FSS contracting officers are being incorporated into the GSAM. The category manager guidance will include instructions to use transactional data for category analysis, as well as approval requirements for adding data elements to the new Transactional Data Reporting clauses, including approvals by the head of contracting activity and GSA's Senior Procurement Executive and coordination with the applicable category manager. The FSS contracting officer guidance will give instructions for evaluating offers for FSS contracts when transactional data is available.

One of the objectives of the new FSS contracting officer guidance is to align

<sup>41</sup> See General Services Administration Acquisition Manual section 501.170, available at <https://www.acquisition.gov/?q=browsegsam>.

<sup>42</sup> 41 U.S.C. 1707.

<sup>43</sup> See General Services Administration Acquisition Manual section 501.602, available at <https://www.acquisition.gov/?q=browsegsam>.

<sup>44</sup> 48 CFR 515.408.

<sup>38</sup> See the 72A Sales Reporting System, accessible at <https://72a.gsa.gov>.

<sup>39</sup> See the Vendor Support Center, accessible at <https://vsc.gsa.gov>.

<sup>40</sup> 5 U.S.C. 552.

FSS offer evaluation procedures with the FAR. Accordingly, FSS contracting officers will be instructed to evaluate the data in the context of each offer, taking into account desired terms and conditions, quantity discounts, unique attributes, socio-economic considerations, and other relevant information. Contracting officers are encouraged to discuss with the offeror perceived variances between offered prices, transactional data, and existing contract-level prices, in order to evaluate whether other attributes (e.g., superior warranties, quantity discounts, etc.) justify awarding higher prices.

The new guidance will include an order of preference for information to be used when evaluating FSS offers and establishing negotiating objectives, including the following:

1. Using data that is readily available, in accordance with FAR 15.404–1(b)(2)(ii),<sup>45</sup> including prices paid information on contracts for the same or similar items; contract-level prices on other FSS contracts or Governmentwide contracts for the same or similar items, and commercial data sources providing publicly available pricing information.

2. Performing market research to compare prices for the same or similar items in accordance with FAR 15.404–1(b)(2)(vi).<sup>46</sup>

3. Requesting additional pricing information such as “data other than certified cost or pricing data” (as defined at FAR 2.101<sup>47</sup>) from the offeror in accordance with FAR 15.404–1(b)(2)(vii)<sup>48</sup> when the offered prices cannot be determined to be fair and reasonable based on the data found from other sources.

Traditionally, GSAR section 538.270, Evaluation of multiple award schedule (MAS) offers, has instructed FSS contracting officers to require pricing information through the CSP format and seek the offeror’s best price. As these instructions are included in the regulatory portion of the GSAM, this case includes new language for these instructions to specify their use only when the CSP format is included in the solicitation (i.e., for the Schedules and SINs not included in the pilot program). The new offer evaluation instructions belong in the non-regulatory section of the GSAM because they provide supplementary guidance to the FAR and do not impose a regulatory burden on

the public. However, even though the GSAM guidance is not subject to public comment and is not included with the regulatory changes of this rule, it will be viewable in tandem with the corresponding GSAR policy on *Acquisition.gov*.<sup>49</sup>

**V. Public Comments Overview and Discussion**

GSA received 26 comment letters in response to the proposed rule.<sup>50</sup> The breakdown along commenter categories is as follows:

Vendors .....	9
Industry Associations .....	8
Individuals .....	5
Government Stakeholders .....	2
Other Groups .....	2

All comments filed were considered, many of which led to the changes described in Section III of this document.<sup>51</sup> The following is an overview of these comments and GSA’s responses, organized into groupings that are sorted by the number of commenters, with the first grouping containing the most commenters. GSA’s responses to these comments are contained within each grouping.

*Burden.*

Nineteen commenters provided comments related to the compliance burden.<sup>52</sup> Several questioned GSA’s burden projections, stating the compliance estimates were understated and the projected burden reduction was overstated. Multiple commenters stated the Government is shifting the burden of gathering transactional data onto vendors, with some suggesting the burden will lead to higher prices or that vendors should be reimbursed for costs incurred.

The proposed rule contained burden estimates in accordance with the Paperwork Reduction Act, including a one-time average initial setup burden of 6 hours and an average monthly reporting burden of approximately .52 of an hour, or 31 minutes. The ongoing reporting burden for FSS vendors, following a first-year burden for implementation, was estimated to \$7.6 million a year. However, the proposed

rule coupled the new reporting requirement with the removal of the PRC tracking customer provision, which would have resulted in an estimated burden reduction of \$51 million a year if applied to the entire GSA Schedules program.<sup>53</sup>

Most of the commenters weighing in on the burden stated the estimates were significantly underestimated. For example, one association compared the proposed rule’s burden estimates with the results of a survey it conducted among some of its members to assess the costs of implemented the requirements set forth in the proposed rule. It reported the following for setup time:

When asked about the estimated number of hours that their company would require for initial startup to comply with the proposed rule, small business respondents reported that it would take on average 232 hours. Large and medium size contractors estimated that it would take on average 1192 hours. In the context of an average work week, small businesses estimated that it would take nearly 6 weeks for initial setup, which would require limited resources to be diverted to this effort. Large and medium size businesses reported that it would take nearly 8 months on average to setup these systems. The proposed rule suggests that contractors should undertake this compliance burden at “no cost to the government.”<sup>54</sup>

That association also reported much higher figures for its monthly reporting estimates:

In the survey contractors also report a significantly higher number of hours required to do the monthly transactional data reporting than estimated in the proposed rule. Respondents were asked in the survey to estimate the number of hours it would take their company to report the transactional data on a monthly basis. GSA estimated that it would only take 31 minutes per month. However, small businesses reported that it would take 38 hours per month on average. Large and medium size businesses estimated that it would take an average of 68 hours per month—nearly 2 weeks to conduct the reporting.<sup>55</sup>

One commenter also questioned GSA’s and ordering agencies’ ability to use the data, and GSA’s capability to enforce the reporting requirements.”<sup>56</sup> Multiple commenters stated they would not realize a net burden reduction when the PRC tracking customer provision is removed. For example, one commenter

<sup>45</sup> Federal Acquisition Regulation 15.404–1(b)(2)(ii) (48 CFR 15.404–1(b)(2)(ii)).

<sup>46</sup> Federal Acquisition Regulation 15.404–1(b)(2)(iv) (48 CFR 15.404–1(b)(2)(iv)).

<sup>47</sup> Federal Acquisition Regulation 2.101 (48 CFR 2.101).

<sup>48</sup> Federal Acquisition Regulation section 15.401–1(b)(2)(vii) (48 CFR 15.404–1(b)(2)(vii)).

<sup>49</sup> See the General Services Administration Acquisition Manual, available at <https://www.acquisition.gov/?q=browsegsam>.

<sup>50</sup> See GSAR Case 2013–G504; 80 FR 11619 (Mar. 4, 2015).

<sup>51</sup> See Section III.A, Summary of Changes Made at the Final Rule Stage.

<sup>52</sup> See e.g., ABA Letter, Abt Associates Letter, Allen Letter, ARA Letter, CGP Letter, CODSIA Letter, EA Letter, Experian Letter, GSA OIG Letter, immixGroup Letter, IOPFDA Letter, *Insite.rr.com* Letter, Johnson & Johnson Letter, NDIA Letter, POGO Letter, RTI Letter, SBA Letter, Shepra Letter, SIA Letter.

<sup>53</sup> The \$51 million burden reduction was the ongoing FSS reporting burden (\$7.6 million) minus the PRC burden of \$58.5 million from the 2012 PRC information collection (OMB Control Number 3090–0235). The \$7.6 million FSS reporting burden did not include the burden for one-time implementation. The \$51 million burden reduction applied to the entire GSA Schedules program and was not adjusted to only account for vendors participating in the FSS pilot.

<sup>54</sup> See CGP Letter.

<sup>55</sup> *Ibid.*

<sup>56</sup> See GSA OIG Letter.

noted the PRC only requires disclosures when a price reduction is triggered, while this rule will require monthly reporting.<sup>57</sup>

Finally, multiple commenters stated Government is shifting the burden of gathering transactional data onto vendors. Some commenters said this will force industry to charge higher prices to recoup their costs, while others argued vendors should be directly reimbursed for reporting costs.

*Response:* As a result of these comments, GSA reevaluated its estimation methodology and recalculated the burden based on whether vendors use automated or manual systems to identify and report transactional data. An automated system is one that relies on information technology, such as an accounting system or data management software, to identify and compile reportable data. These systems can tremendously streamline the reporting process but require upfront configuration to perform the tasks, such as coding the data elements to be retrieved. Conversely, a manual system is one that incorporates little to no automation and instead relies on personnel to manually identify and compile the reportable data. An example of a manual system would be an accountant reviewing invoices to identify the reportable data and then transferring the findings to a spreadsheet. In contrast to automation, a manual system requires relatively little setup time but the reporting effort will generally increase with the vendor's sales volume.

The likelihood of a vendor adopting an automated system increases with their applicable sales volume. Vendors with little to no reportable data are unlikely to expend the effort needed to establish an automated reporting system since it will be relatively easy to identify and report a limited amount of data. In Fiscal Year 2015, 32 percent of FSS vendors reported \$0 sales, while another 34 percent reported average sales between \$1 and \$20,000 per month. If the rule were applied to the entire Schedules program, approximately two-thirds, or nearly 11,000 vendors, would have a lower reporting burden. However, as a vendor's applicable average monthly sales increase, they will be increasingly likely to establish an automated system to reduce the monthly reporting burden. Consequently, vendors with higher reportable sales will likely bear a higher setup burden to create an automated system, or absorb a high monthly

reporting burden if they choose to rely on manual reporting methods.

This renewed analysis led GSA to increase its burden estimates.<sup>58</sup> For FSS contracts in particular—

- The projected setup time for an automated system increased from an average of 6 hours<sup>59</sup> to an average of 240 hours, and
- The projected monthly reporting time range grew from 0.3 minutes–4 hours to 0.25 hours–48 hours.

However, GSA's estimates are still considerably lower than the estimates provided through the public comments,<sup>60</sup> primarily because—

- At least two-thirds of the potential Transactional Data Reporting participants will have a relatively lower burden (*e.g.*, vendors with lower or no sales), and
- Vendors with higher reporting volume will face lower setup times with a higher monthly reporting burden, or higher setup times with a lower monthly reporting burden. In other words, vendors will not face a higher setup burden and a higher monthly reporting burden to comply with the rule.

This increase in the burden estimates reinforced the need to evaluate existing pricing disclosure requirements that could be rendered obsolete once transactional data is collected. After evaluating these comments and submitting the Federal Supply Schedule Pricing Disclosures information collection request (OMB control number 3090–0235),<sup>61</sup> GSA concluded Transactional Data Reporting would not only exceed the PRC tracking customer provision benefits, it would also alleviate the need for CSP disclosures when combined with automated commercial data sources, new data analytic tools, and improved price analysis policy. Even with the increased Transactional Data Reporting burden estimates, GSA projects an average annual burden reduction of approximately \$32 million for FSS pilot vendors when the new Transactional Data Reporting requirements are paired with the removal of CSP disclosures and the PRC tracking customer provision.<sup>62</sup>

<sup>58</sup> See Section VIII.B for a discussion of the burden estimates in accordance with Paperwork Reduction Act requirements.

<sup>59</sup> The proposed rule setup time estimates did not differentiate between manual and automated reporting systems.

<sup>60</sup> See CGP Letter.

<sup>61</sup> More information about Information Collection 3090–0235 can be found at <http://www.reginfo.gov/public> by searching "ICR" for "3090–0235".

<sup>62</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden

As noted in Section III of this document, this proposal is particularly advantageous for small businesses.<sup>63</sup> In order to enter the federal marketplace through the Schedules program, small businesses have traditionally been required to absorb the burden of gathering CSP disclosures and developing robust PRC compliance systems before making even a dollar in revenue through their Schedule contracts. However, under the Transactional Data Reporting model, small businesses entering the Schedules program would not, in most cases, be likely to make significant upfront investments because they will only be impacted after they have won a Schedule order. Additionally, unlike information compiled to populate CSPs, which is created specifically for GSA, the transactional data reported each month is readily available data used to generate invoices.

Regarding the ability of GSA and ordering agencies to use the data, new systems are being deployed to leverage the information. Transactional data reported in accordance with the new clauses will be shared with authorized users to craft smarter buying strategies. GSA is also developing data visualization tools to make the data more user friendly. Within GSA, FAS has established a data analytics team that will assist in the establishment and ongoing analysis of contract-level prices. In terms of oversight, FAS will use many of the same resources it currently deploys to ensure compliance with the existing GSAR clause 552.238–74, Industrial Funding Fee and Sales Reporting.<sup>64</sup>

GSA is pursuing this initiative because obtaining transactional data from its industry partners is the most feasible path the Government can take to implement smarter buying strategies and promote taxpayer value. GSA recognizes the burden that comes with this rule and will continually evaluate ways to minimize the data collection. However, this rule will not lead to higher costs and subsequently higher prices because the changes to the CSP and PRC requirements provide a net burden reduction. To the contrary,

allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors. (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>63</sup> See Section III.B, Alternatives Analysis.

<sup>64</sup> General Services Administration Acquisition Regulation clause 552.238–74 (48 CFR 552.238–74).

<sup>57</sup> See immixGroup Letter.

Transactional Data Reporting, as shown by the results shared in Section II of this document, will lead to lower prices.<sup>65</sup>

#### Using Transactional Data for Imperfect Comparisons

Fifteen commenters provided comments related to whether transactional data is useful for making imperfect comparisons.<sup>66</sup> The proposed rule noted, “[f]or FSS vehicles, the clause would be introduced in phases, beginning with a pilot for select products and commoditized services.”<sup>67</sup> Following publication of the proposed rule, FAS posted a proposed list of Schedules to be included in the Transactional Data Reporting pilot; the Schedules chosen primarily contained products that generally have standard part numbers, enabling direct comparisons between like items.<sup>68</sup> However, the proposed rule was clear the reporting requirements could expand to all Schedules, including those for services and complex solutions.

Commenters expressed concern that transactional data would eventually be collected and used for goods and services that do not lend themselves to perfect comparisons. Multiple commenters noted it will be difficult, and in some cases impossible, to make one-to-one comparisons for professional services and complex or customizable products, such as laptops. For example, one commenter noted complex service offerings are “priced according to very specific circumstances related to risk, security requirements, geographic area of performance, and the qualifications of the individuals performing the work.”<sup>69</sup> Two commenters stated GSA will have difficulty standardizing labor categories in order to make comparisons for service-related transactional data.<sup>70</sup> One commenter suggested the pilot include a professional services Schedule to allow implementation to proceed “in a controlled manner allowing for

continuous feedback from contractors and reconsideration of the true intent and usability of the data that GSA is trying to gather.”<sup>71</sup> Additionally, one commenter stated GSA is relying on the reported success of the Office Supplies 2 (OS2) contract as validation for transitioning to a horizontal pricing model, which is not a representative sample of the Schedules program.<sup>72</sup>

Multiple commenters stated concerns with how the Government will use prices paid data when conducting a horizontal price analysis. One commenter noted FAR section 15.404–1(b)(2)(ii) allows the “comparison of proposed prices to historical prices paid . . . for the same or similar items” but that paragraph (A) of this FAR section states:

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 comparison.<sup>73 74</sup>

Other commenters gave examples of other factors that should be taken into account when making comparisons, such as differing quantities or terms and conditions. For example, one commenter was concerned the data would create a false expectation for the lowest reported prices, as deep discounts can be offered on a one-time based or in response to special promotions, ease of service, volume, or geographic location.<sup>75</sup>

*Response:* GSA gave consideration as to whether Transactional Data Reporting should be considered for all FSS contracts or only those that include products or services that would allow straightforward comparisons, such as commodities with standard part numbers. GSA agrees transactional data is most useful for price analysis when comparing like items, but disagrees with the notion that the data is not useful when perfect comparisons cannot be made. Namely, the FAR allows comparisons of prices paid for similar items and data for dissimilar items is useful when conducting market research or performing the consumption analysis that underlies the formation of demand management strategies.

Transactional data will assist Government buyers and FSS contracting officers in using the price analysis

techniques found in FAR section 15.404–1(b)(2)(ii), as transactional data is necessary to make a comparison of “proposed prices to historical prices paid . . . for the same or similar items.” Although paragraph (A) of FAR section 15.404–1(b)(2)(ii) notes the prior price is not a valid basis of 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 . . .,” it does allow for some variance in factors when making comparisons. Furthermore, paragraph (B) of FAR section 15.404–1(b)(2)(ii) not only allows, but requires, a prior price to “be adjusted to account for materially differing terms and conditions, quantities and market and economic factors.” In other words, when there has been no significant time lapse, the terms and conditions of an acquisition are similar to previous purchases, and the reasonableness of the prior price is certain, transactional data is valid for comparisons of, if not identical, at least similar items and can be adjusted to account for materially different terms and conditions, quantities, and market and economic factors.

Transactional data will also be instrumental for informing buying decisions and crafting overarching demand management strategies, regardless of whether the data is too dissimilar for price comparisons. For instance, the availability of transactional data will provide buyers visibility into the variables that drive costs, which is key to defining requirements and developing accurate cost estimates. Likewise, category managers will gain insight into the assorted options available for satisfying common requirements, and then use the lessons learned to form demand management strategies that promote the most efficient methods for meeting the Government’s needs.

Regarding the differences between the Schedules program and OS2, GSA agrees that the success of the Federal Strategic Sourcing Initiative (FSSI), which includes OS2, was an important factor in GSA’s decision to pursue Transactional Data Reporting for the larger Schedules program. While GSA anticipates Transactional Data Reporting will be successful, it recognizes its assumptions should be tested, and therefore opted to begin with a pilot. GSA does not expect this pilot to replicate or exceed the discounts achieved through FSSI—often up to 30 percent lower than the comparable Schedule prices—partly because of the

<sup>65</sup> See Section II.B, Necessity and Value of Transactional Data.

<sup>66</sup> See e.g., ABA Letter, Abt Associates Letter, Allen Letter, ARA Letter, Atkins Letter, CGP Letter, CODSIA Letter, EA Letter, GSA OIG Letter, immixGroup Letter, NDIA Letter, NMFITA Letter, RTI Letter, Shepra Letter, SIA Letter.

<sup>67</sup> See GSAR Case 2013–G504; 80 FR 11619 (Mar. 4, 2015).

<sup>68</sup> GSA proposed five Schedules in a GSA Interact posting following publication of the proposed rule. Those Schedules were 51 V, Hardware Superstore; 58 I, Professional Audio/Video, Telemetry/Tracking, Recording/Reproducing and Signal Data Solutions; 72, Furnishing and Floor Coverings; 73, Food Service, Hospitality, Cleaning Equipment and Supplies, Chemicals and Services; and 75, Office Products.

<sup>69</sup> See NDIA Letter.

<sup>70</sup> See e.g., EA Letter, GSA OIG Letter.

<sup>71</sup> See Abt Letter.

<sup>72</sup> See GSA OIG Letter.

<sup>73</sup> Federal Acquisition Regulation section 15.404–1(b)(2)(ii) (48 CFR 15.404–1(b)(2)(ii)).

<sup>74</sup> See CGP Letter.

<sup>75</sup> See SIA Letter.

stated differences between the Schedules program and FSSI.

In response to the suggestion that a professional services Schedule be included in the pilot before expanding the requirements across the program, GSA has decided to include the Professional Engineering Services SINs from the Professional Services Schedule in the pilot. The pilot will also now include software SINs under Schedule 70, in order to collect data for more complex solutions. The initial pilot will now reach approximately 30 percent of GSA's FSS contracts, including Schedules/SINs covering a wide array of goods and services that account for 43 percent of the Schedules sales volume. This scope will enable GSA to evaluate the effectiveness of Transactional Data Reporting before deciding whether to expand, limit, or discontinue the program.

Finally, GSA recognizes the complexities of employing horizontal price analysis, whether it is through Transactional Data Reporting or other initiatives. For example, the new CPI initiative is built around a tool that identifies contract-level pricing outside a range determined to be acceptable for identical items; vendors whose prices exceed the acceptable range are then notified of their comparative pricing. It is important to reiterate that a range is identified because GSA appreciates the varying circumstances that can contribute to price variation. For CPI, the FSS contracting officer's final determination will take into account non-price elements, such as materially different terms, quantities, and market and economic factors. The GSAM guidance for FSS contracts, which will be viewable on *Acquisition.gov*, instructs FSS contracting officers to make fair and reasonable, not lowest-price-regardless, determinations. Contracting officers placing orders against GSA's Schedules and other multi-agency vehicles will continue to follow the procedures required by the FAR, including a preference for "best value" solutions.<sup>76</sup> Also, GSA is deploying data visualization tools that provide context for the transactional data for a particular good or service.

#### Public Disclosure of Transactional Data

Thirteen parties provided comments related to public disclosure of transactional data.<sup>77</sup> The proposed rule stated, "GSA also plans to implement an

[application programming interface (API)] for buyers to benefit from using transactional data. Through the API, GSA will make this information accessible online for all Government buyers."<sup>78</sup> GSA did not address in the proposed rule whether this data would be shared with the public. Most of the commenters opposed publicly releasing the data and stated GSA must explain how it intends to protect it.

One commenter asked whether GSA will share the transactional data with vendors,<sup>79</sup> while another commenter suggested vendors should have the same access to the data as Government buyers.<sup>80</sup> Ten commenters opposed the release of the data to the public because it will contain proprietary and confidential business information, with most stating vendors will face adverse impacts if the data is shared and requesting GSA explain how it intends to protect the data from unauthorized disclosure.<sup>81</sup> The SBA Office of Advocacy also stated small businesses are concerned about how the data will be protected.<sup>82</sup> Four commenters stated this type of data is protected from disclosure under FOIA, which states the following are exempted: "trade secrets and commercial or financial information obtained from a person and privileged or confidential."<sup>83 84</sup> One commenter noted the transactional data currently reported under GSA's non-FSS contracts cannot be attributed to a specific vendor.<sup>85</sup> Finally, one vendor stated the rule should provide remedies for vendors in the event of improper disclosure.<sup>86</sup>

*Response:* Transactional data reported in accordance with this rule will be accessible only by authorized users. GSA intends to share the transactional data with the public to the maximum extent allowable while respecting that some data could be exempt from disclosure. Consequently, a data extract will be created for use by the general public, containing information otherwise releasable under FOIA;<sup>87</sup> details about the public data extract will

be released through a forthcoming notice in the **Federal Register**.

Transparency will support a dynamic marketplace by providing vendors with the business intelligence needed to identify customers, determine which products should be included on their contract pricelists, and ascertain whether their prices are competitive. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties.

However, GSA recognizes some information may be protected from public release, which led to the decision to create a public data extract, as opposed to allowing the public the same access as authorized users. The data extract will provide the public a filtered view of the data, including information that is releasable under FOIA, while protecting information that is not.

Finally, GSA is not including remedies in this rule for unauthorized disclosure of data. GSA is taking precautions to prevent unauthorized disclosures of data, but in the event of such an occurrence, GSA will address remedies at that time based on the specific circumstances and in accordance with applicable statutes and regulations.

#### The Government Already Possesses the Data

Thirteen commenters stated the Government already possesses this data.<sup>88</sup> Several commenters stated the Government should develop systems to collect its own data, with some arguing this will be a difficult task for vendors to undertake. Commenters also suggested alternatives to requiring vendors to report the data.

Transactional data is generated when a transaction is made between a buyer and seller. As such, the parties of the transaction will produce and possess this data. For federal contracting, these parties are the Government ordering agency and the vendor. On the Government side, this data is often found in contract writing systems and financial systems. However, these systems are not shared across agencies; in fact, many agencies use multiple versions of these systems. Moreover, systems that do provide transactional data tend to cover a narrow scope of federal spending. For instance, GSA possesses data for transactions

<sup>76</sup> Federal Acquisition Regulation section 1.102 (48 CFR 1.102).

<sup>77</sup> See *e.g.*, ABA Letter, Abt Associates Letter, Allen Letter, ARA Letter, CODSIA Letter, CGP Letter, EA Letter, immixGroup Letter, IOPFDA Letter, NDIA Letter, NMFTA Letter, SIA Letter.

<sup>78</sup> See GSAR Case 2013–G504; Docket 2014–0020; Sequence 1 (80 FR 11619 (Mar. 4, 2015)).

<sup>79</sup> See ARA Letter.

<sup>80</sup> See immixGroup Letter.

<sup>81</sup> See *e.g.*, ABA Letter, Abt Associates Letter, Allen Letter, CODSIA Letter, CGP Letter, EA Letter, IOPFDA Letter, NDIA Letter, NMFTA Letter, SBA Letter, SIA Letter.

<sup>82</sup> See SBA Letter.

<sup>83</sup> 5 U.S.C. 552(b)(4)

<sup>84</sup> See *e.g.*, ABA Letter, Allen Letter, EA Letter, NMFTA Letter.

<sup>85</sup> See CGP Letter.

<sup>86</sup> See ABA Letter.

<sup>87</sup> 5 U.S.C. 552.

<sup>88</sup> See *e.g.*, Allen Letter, ARA Letter, Atkins Letter, CODSIA Letter, CGP Letter, Falcone Letter, immixGroup Letter, IOPFDA Letter, McDonald Letter, NDIA Letter, NMFTA Letter, RTI Letter, Shepra Letter.

completed through GSA Advantage!<sup>®</sup>, but it only accounts for about 1 percent of Schedule sales. Hence, no mechanism exists to compile and analyze transactional data from a wide-range of purchases made across the Government.

Several commenters objected to GSA requiring vendors to report data that originates from the Government. For example, one commenter stated the Government needs to make investments in automated systems that can provide the data without burdening vendors, and that this rule only delays those eventual investments.<sup>89</sup>

Commenters also stated it will not be easier for vendors to provide the data. One commenter stated many vendors do not keep this type of data as a matter of practice, but for the vendors that do, their reporting systems may not be compatible with GSA's reporting site.<sup>90</sup>

Finally, commenters suggested alternatives to vendor-provided transactional data. Two commenters stated GSA should obtain data from the Federal Procurement Data System (FPDS);<sup>91</sup> two commenters questioned why GSA could not pull data from its GSA eLibrary and GSA Advantage!<sup>®</sup> sites;<sup>92</sup> two commenters said GSA should rely on data collected from Government purchase card transactions;<sup>93</sup> one commenter proposed GSA use free, price comparisons sites available to the general public;<sup>94</sup> and one commenter stated GSA should already have the ability to obtain the data from other agencies, or otherwise should not be pursuing the rule.<sup>95</sup>

**GSA Response:** GSA does not have the systems capability to collect transactional data from other agencies. The Initial Regulatory Flexibility Analysis published with the proposed rule included an evaluation of alternatives for obtaining transactional data—internal applications; GSA ordering platforms such as eBuy and GSA Advantage!<sup>®</sup>; the SmartPay credit card purchase program; and upgrades to the FPDS. GSA previously concluded these options would not provide the breadth of data needed to support the Government's objectives or would be unable to do so in the foreseeable future. Since the publication of the proposed rule, GSA reevaluated those alternatives and reached similar conclusions. Particularly, in regards to relying on

purchase card data, doing so would limit the Government to a small, non-representative sample of data that would be ineffective for the broader goals of category management and smarter buying strategies. Although one commenter suggested the Government should increase its purchase card usage in order for purchase card data to be a viable solution, doing so would require numerous regulatory, procedural, and security changes to implement, which could not be accomplished in the near future and therefore would not support the Government's immediate needs.

Additionally, the Government's electronic invoicing initiative<sup>96</sup> was assessed as a potential alternative. However, following meetings regarding electronic invoicing implementation with representatives from the Department of Defense, Department of Energy, Department of Transportation, Department of Treasury, and Department of Veterans Affairs, it was determined these electronic invoicing platforms will not provide a Government-wide transactional data reporting solution in the near term.

Lastly, GSA will consider changes, or even rescind Transactional Data Reporting, as new data systems come online that improve the Government's ability to aggregate and analyze its purchasing data. Also, GSA is exploring ways to synchronize its transactional data intake system with other applications that share common attributes in order to reduce the number of vendor-reported data elements.

#### Order-Level Competition Ensures Best Value

Nine commenters stated GSA should rely on order-level competition to ensure the Government is receiving the best value.<sup>97</sup> The general sentiment is rather than requiring pricing disclosures or Transactional Data Reporting, GSA should promote order-level competition to meet its pricing objectives. Many of these comments were in response to the following passage from the proposed rule **Federal Register** notice:

The Government, and other customers in the category to which the government is most typically aligned under the price reductions clause, tend to receive voluntary price reductions from the vendor as a result of general market forces (e.g., intense competition and small profit margins within

the IT hardware arena that cause vendors to lower their prices for all customers voluntarily to maintain market share). In other words, prices are reduced under the voluntary provisions of the price reduction clause as a result of market rate pricing changes, not under the mandatory tracking customer provisions. GSA recently analyzed modifications issued between October 1, 2013 and August 4, 2014 under nine of its [Schedules] . . . GSA found that only about 3 percent of the total price reductions received under the price reduction clause were tied to the "tracking customer" feature. The vast majority (approximately 78 percent) came as a result of commercial pricelist adjustments and market rate changes, with the balance for other reasons.<sup>98</sup>

Six of those commenters expressed support for the proposed PRC changes in the context of the general statement that order-level competition is the most effective method for driving down prices.<sup>99</sup>

**Response:** Competition at the task order level is essential for the Government to ensure it receives the best value, which is one of the reasons GSA is pursuing Transactional Data Reporting. In fact, transactional data has a proven history of driving competition, which is illustrated by the examples shown in Section II.<sup>100</sup> These successes, along with emerging technology, led to the decision to pursue Transactional Data Reporting in lieu of continuing to require CSP and PRC disclosures. Furthermore, this initiative promotes objectives that are not facilitated by order-level competition, such as transparency, demand management, and reducing contract duplication.

#### Commercial Sales Practices (CSP) Disclosures

Nine parties submitted comments related to the proposed rule's retention of CSP disclosures.<sup>101</sup> While the proposed rule included the removal of the PRC tracking customer provision, it retained CSP disclosures while noting:

[V]endors would still be subject to the commercial sales disclosure requirements, including the requirement to disclose commercial sales practices when requesting a contract modification for additional items or additional Special Item Numbers. In addition, GSA would maintain the right throughout the life of the FSS contract to ask a vendor for updates to the disclosures made on its commercial sales format (which is used

<sup>89</sup> See GSAR Case 2013–G504; Docket 2014–0020; Sequence 1 (80 FR 11619 (Mar. 4, 2015)).

<sup>90</sup> See e.g., ABA Letter, Allen Letter, CODSIA Letter, immixGroup Letter, NDIA Letter, RTI Letter.

<sup>91</sup> See Section II.B, Necessity and Value of Transactional Data.

<sup>92</sup> See e.g., Abt Associates Letter, ABA Letter, CODSIA Letter, EA Letter, Experian Letter, immixGroup Letter, Johnson & Johnson Letter, RTI Letter, SIA Letter.

<sup>96</sup> See Office of Management and Budget memorandum M–15–19, "Improving Government Efficiency and Saving Taxpayer Dollars Through Electronic Invoicing", July 17, 2015, available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-19.pdf>.

<sup>97</sup> See e.g., ABA Letter, Allen Letter, CODSIA Letter, CGP Letter, EA Letter, immixGroup Letter, IOPFDA Letter, NDIA Letter, RTI Letter.

<sup>89</sup> See NDIA Letter.

<sup>90</sup> See CODSIA Letter.

<sup>91</sup> See e.g., Atkins Letter, Shepra Letter.

<sup>92</sup> See Atkins Letter, RTI Letter.

<sup>93</sup> See e.g., Allen Letter, McDonald Letter.

<sup>94</sup> See CGP Letter.

<sup>95</sup> See NMFTA Letter.

to negotiate pricing on FSS vehicles) if and as necessary to ensure that prices remain fair and reasonable in light of changing market conditions.

Nine commenters stated removing the PRC tracking customer feature does not relieve vendors of the burden of tracking commercial pricing, which will still be necessary to provide CSP disclosures.<sup>102</sup> Five commenters stated the proposed rule language would lead to more requests for CSP disclosures.<sup>103</sup> For example, one commenter noted the burden reduction achieved through the PRC changes would be in some cases more than offset by Transactional Data Reporting requirements and increased CSP disclosures.<sup>104</sup>

*Response:* GSA did not intend for the proposed rule language relating to CSPs to increase disclosures. However, these comments did lead to a reevaluation of the CSP disclosure burden and ultimately the removal of CSP disclosures for FSS vendors subject to the Transactional Data Reporting requirement.

As noted in Section III of this document, GSA also began preparing its routine renewal request for the PRC information collection, identified under OMB Control Number 3090–0235, in the summer of 2015.<sup>105</sup> Since the PRC information collection was last approved in 2012, GSA needed to prepare its information collection renewal request after publishing the Transactional Data Reporting proposed rule. While GSA would have proceeded with a renewal request regardless, the timing did allow for the consideration of the Transactional Data Reporting comments. In particular, GSA agreed with the general industry comment that burdens of the PRC and CSP are related and therefore decided to include CSP disclosure burden estimates with the PRC information collection request (ICR). GSA also opted to change the name of Information Collection 3090–0235 from “Price Reductions Clause” to “Federal Supply Schedule Pricing Disclosures” to more accurately reflect the scope of the information collected.

Following two **Federal Register** notices requesting comments on the FSS Pricing Disclosures ICR,<sup>106</sup> GSA increased its annual burden estimates for GSA FSS contractors, including

those who would participate in the Transactional Data Reporting pilot, from \$59 million<sup>107</sup> to \$102 million.<sup>108</sup> These higher burden projections, coupled with the increased Transactional Data Reporting burden estimates calculated in response to the public comments, were a significant concern and reinforced the need to pair Transactional Data Reporting with other significant forms of burden reductions. Therefore, GSA is removing CSP disclosures in addition to the PRC tracking customer provision for FSS vendors subject to the new Transactional Data Reporting clause, resulting in an average annual burden reduction for FSS pilot contractors of approximately \$32 million.<sup>109</sup>

Additionally, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government’s burden by about \$3 million a year.<sup>110</sup>

Transactional Data Reporting negates the need for CSP disclosures when used in conjunction with automated commercial data sources, new data analytic tools, and improved price analysis policy. As discussed in Section IV of this document,<sup>111</sup> GSA is releasing new GSAM guidance, which will be viewable on *Acquisition.gov*, that provides instructions to FSS contracting officers on how to evaluate offers and

establish negotiating objectives without relying on CSP disclosures. For example, the new guidance provides the following order of preference for information:

1. Use data that is readily available, in accordance with FAR 15.404–1(b)(2)(ii),<sup>112</sup> including prices paid information on contracts for the same or similar items; contract-level prices on other FSS contracts or Governmentwide contracts for the same or similar items, and commercial data sources providing publicly available pricing information.

2. Perform market research to compare prices for the same or similar items in accordance with FAR 15.404–1(b)(2)(vi).<sup>113</sup>

3. Request additional pricing information such as “data other than certified cost or pricing data” (as defined at FAR 2.101<sup>114</sup>) from the offeror in accordance with FAR 15.404–1(b)(2)(vii)<sup>115</sup> when the offered prices cannot be determined to be fair and reasonable based on the data found from other sources.

#### Small Business Impacts

Multiple commenters addressed small businesses in other comments, but six commenters stated there are certain aspects of the rule are especially impactful on small business.<sup>116</sup> In the proposed rule, GSA did not create separate requirements for small businesses or other classes of vendors. Additionally, the burden analysis separated FSS vendors into categories based on Schedule sales volume but did not calculate separate burden estimates for small or other-than-small businesses.

Three commenters noted that this rule will make it more difficult for small businesses to compete against other-than-small businesses in the federal marketplace,<sup>117</sup> citing an overemphasis on pricing over value-added services. Two of those commenters stated GSA did not adequately address small business impacts.<sup>118</sup> Additionally, four commenters expressed concern over small businesses’ ability to absorb the costs associated with the new reporting requirements, which creates a barrier to

<sup>107</sup> The 2012 information collection did not provide a cost burden estimate, but if the same hourly rate (\$68) was applied to the 2012 time burden, the 2012 cost burden would have been \$59,086,560.

<sup>108</sup> The annual public reporting burden for the CSP and PRC, excluding FSS vendors participating in the Transactional Data Reporting pilot, is \$57.66 million. If FSS pilot vendors were still subject to the CSP and PRC reporting requirements, the total annual public reporting burden would be \$101.69 million. The FSS pilot vendors’ share of the total CSP and PRC reporting burden is based upon their share of the GSA FSS fiscal year 2015 sales volume, 43.2 percent. The annual \$44.03 million reporting burden reduction attributed to this rule is 43.2 percent of the \$101.69 million annual reporting burden if it were applied to the entire GSA FSS program. More information about Information Collection 3090–0235 can be found at <http://www.reginfo.gov/public> by searching “ICR” for “3090–0235”.

<sup>109</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>110</sup> \$3 million is the result of the Government’s annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).

<sup>111</sup> See Section IV.D, Procedures.

<sup>112</sup> Federal Acquisition Regulation section 15.404–1(b)(2)(ii) (48 CFR 15.404–1(b)(2)(ii)).

<sup>113</sup> Federal Acquisition Regulation section 15.404–1(b)(2)(iv) (48 CFR 15.404–1(b)(2)(iv)).

<sup>114</sup> Federal Acquisition Regulation 2.101 (48 CFR 2.101).

<sup>115</sup> Federal Acquisition Regulation section 15.401–1(b)(2)(vii) (48 CFR 15.404–1(b)(2)(vii)).

<sup>116</sup> See *e.g.*, ABA Letter, CGP Letter, Falcone Letter, *Insite.rr.com* Letter, RTI Letter, SBA Letter.

<sup>117</sup> See *e.g.*, ABA Letter, CGP Letter, SBA Letter.

<sup>118</sup> See *e.g.*, ABA Letter, SBA Letter.

<sup>102</sup> See *e.g.*, Abt Associates Letter, ABA Letter, CODSIA Letter, EA Letter, Experian Letter, immixGroup Letter, Johnson & Johnson Letter, RTI Letter, SIA Letter.

<sup>103</sup> See *e.g.*, Abt Associates Letter, ABA Letter, CODSIA Letter, EA Letter, SIA Letter.

<sup>104</sup> See CODSIA Letter.

<sup>105</sup> See Section III.B, Alternatives Analysis.

<sup>106</sup> See 80 FR 72060 (Nov. 18, 2015) and 81 FR 21346 (Apr. 11, 2016).



entry into the federal marketplace.<sup>119</sup> Lastly, one commenter stated the Initial Regulatory Flexibility Analysis did not provide a clear understanding of the legal framework for requiring Transactional Data Reporting.<sup>120</sup>

*Response:* GSA was especially mindful of small business concerns when forming this rule and believes small businesses will benefit significantly by no longer being subjected to the complex CSP and PRC pricing disclosure requirements. Moreover, under the Transactional Data Reporting, burden is tied to sales volume, which will also benefit small businesses, as they hold 80 percent of the total contracts and account for 39 percent of sales.<sup>121</sup> Unlike the new data reporting requirements, the current CSP and PRC disclosure requirements are constant, meaning vendors, especially those with a higher number of FSS contract offerings, must bear the burden even if they have little to no sales through their FSS contracts. Thus, small businesses are disproportionately affected by the current reporting requirements because they account for the bulk of lower volume contracts.

GSA intends to share transactional data to the maximum extent allowable to promote transparency and competition while respecting that some data could be exempt from disclosure. The data will serve as valuable market intelligence for vendors to use for crafting more efficient, targeted business development strategies that incur lower administrative costs. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties.

Nevertheless, GSA will be mindful of Transactional Data Reporting's small business impacts. The initiative is being phased in on a pilot basis. GSA's Senior Procurement Executive will regularly evaluate progress against metrics, including small business participation, in consultation with the Administrator for Federal Procurement Policy and other interested stakeholders to determine whether to expand, limit, or discontinue the program. No expansion of the pilot or action to make Transactional Data Reporting a permanent fixture on the Schedules will occur prior to the careful evaluation of

at least one year of experience with the pilot.

With respect to the burden analysis, GSA did not differentiate between small businesses and other-than-small businesses in its burden estimates because Transactional Data Reporting imposes a progressive burden—one that increases with a vendor's sales volume. Namely, monthly reporting time will increase with a vendor's applicable sales volume, as vendors with lower to no reportable sales will spend little time on monthly reporting, while those businesses with more reportable sales will face a higher reporting burden. Likewise, setup costs will be a major driver of the new reporting burden, but vendors with little to no activity on their FSS contracts will likely forgo investments in new reporting systems because the reporting burden will not be significantly more than that of the current quarterly sales reporting requirements.

Finally, in regards to the legal framework of the new system, GSA will be implementing the Transactional Data Reporting clauses through bilateral modifications on existing contracts, meaning vendors must agree to the changes before GSA can insert a new clause in a contract. New contracts awarded under the pilot Schedules/SINs or future Governmentwide IDIQ vehicles will include the new Transactional Data Reporting clauses, but vendors will have an opportunity to view the requirements before agreeing to a contract. For the Schedules, GSA is instituting this program to meet its obligations under 41 U.S.C. 152(3)(b), which states that orders and contracts awarded under the FSS program must result in "the lowest overall cost alternative to meet the needs of the Federal Government."

#### Transactional Data Reporting Will Have Adverse Impacts for the Government

Six commenters stated Transactional Data Reporting will lead to a counterproductive fixation on lower prices.<sup>122</sup> Two commenters stated horizontal price analysis will obscure differences in terms and conditions and adversely impact the Government's ability to achieve the best value.<sup>123</sup> Three commenters also said there is a significant risk of horizontal pricing forcing quality providers to leave the FSS program because of an expectation of untenable low prices.<sup>124</sup> Another

commenter stated price transparency will provide a disincentive for offering spot discounts because doing so will create a permanent expectation for those prices.<sup>125</sup> Finally, one commenter stated this rule may cause prices to increase because costs to comply with Transactional Data Reporting will outweigh the potential gains achieved through horizontal pricing.<sup>126</sup>

*Response:* Horizontal pricing models that leverage transactional data have a proven track record of lowering prices. As shown in Section II of this document,<sup>127</sup> GSA has successfully instituted horizontal pricing models, resulting in savings of nearly 30 percent on Office Supplies 3 (OS3), 26 percent on FSSI Wireless, and 34 percent on COMSATCOM. These are savings that taxpayers rightfully deserve.

FSS contracting officers will be instructed to evaluate the data in the context of each offer, taking into account not only cost and quantity discounts, but desired terms and conditions, unique attributes, socio-economic considerations, and other relevant information. Contracting officers will further be encouraged to discuss with the offeror perceived variances between offered prices, transactional data, and existing contract-level prices, in order to evaluate whether other attributes (*e.g.*, superior warranties, quantity discounts) justify awarding higher prices.

More importantly, transactional data provides benefits beyond better pricing. For instance, it supports the key category management principles of optimizing existing contract vehicles and reducing contract duplication.<sup>128</sup> With transactional data, the Government can analyze its consumption patterns, evaluate and compare purchasing channels, and identify best-in-class solutions. Thereafter, the Government can leverage its buying power and demand management strategies to achieve taxpayer savings as it concentrates its purchases through fewer channels, while vendors realize lower administrative costs. Facilitating the development of demand management strategies is also a significant benefit. As illustrated by GSA's Domestic Delivery Services 2 (DDS2), transactional data provided valuable insight into how shipping

<sup>125</sup> See Allen Letter.

<sup>126</sup> See ABA Letter.

<sup>127</sup> See Section II.B, Necessity and Value of Transactional Data.

<sup>128</sup> See "Government-wide Category Management, Guidance Document, Version 1.0," Office of Management Budget, May 2015, available at [https://hallways.cap.gsa.gov/information/Gov-wide\\_CM\\_Guidance\\_V1.pdf](https://hallways.cap.gsa.gov/information/Gov-wide_CM_Guidance_V1.pdf).

<sup>119</sup> See *e.g.*, ABA Letter, Falcone Letter, Insite.rr.com Letter, RTI Letter.

<sup>120</sup> See SBA Letter.

<sup>121</sup> Based on fiscal year 2015 Federal Supply Schedule contract data.

<sup>122</sup> See *e.g.*, ABA Letter, Allen Letter, CGP Letter, CODSIA Letter, Experian Letter, SIA Letter.

<sup>123</sup> See *e.g.*, EA Letter, CGP Letter.

<sup>124</sup> See *e.g.*, Experian Letter, SIA Letter, CGP Letter.

needs were met and helped the Government change its consumption behavior by foregoing unnecessary express air shipments in favor of less expensive ground shipments. By Fiscal Year 2015, air shipments shrank from 90 percent to 60 percent of revenue and 46 percent of total shipments, while ground shipments grew to 40 percent of revenue and 54 percent of total shipments.

Lastly, GSA recognizes the costs for compliance with the Transactional Data Reporting requirements make it necessary to alleviate the burden of other compliance requirements. Therefore, this rule removes CSP disclosures and the PRC tracking customer provision for FSS vendors subject to the new Transactional Data Reporting clause, resulting in an average annual burden reduction of approximately \$32 million for FSS pilot vendors.<sup>129</sup> Additionally, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government's burden by about \$3 million a year.<sup>130</sup> These changes, coupled with transactional data's virtues, ensure this rule will benefit the Government and lead to savings for the American taxpayer.

#### Business Liability Risk

Four parties submitted comments relating to increased business liability risks.<sup>131</sup> Two commenters stated the transactional data vendors submit would increase the amount of information that can be audited, and thereby, more audits, investigations, lawsuits, and other punitive actions.<sup>132</sup> The other two commenters predicted increased allegations of fraud under the False Claims Act stemming from data inaccuracies.

*Response:* False Claims arise when a person "knowingly" deceives the Government.<sup>133</sup> As such, GSA does not

<sup>129</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>130</sup> \$3 million is the result of the Government's annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).

<sup>131</sup> See *e.g.*, Allen Letter, CODSIA Letter, CGP Letter, EA Letter.

<sup>132</sup> See Allen Letter, EA Letter.

<sup>133</sup> 31 U.S.C. 3729.

anticipate increased False Claims actions because there is no expectation of an increase in vendors "knowingly" deceiving the Government. Moreover, the new Transactional Data Reporting site will allow vendors more leeway to fix errors than the current 72A Reporting System. While sales adjustments submitted through the 72A system must be approved by the assigned Industrial Operations Analyst (IOA), vendors will be able to submit data corrections through the new site on their own, although IOAs will be notified of corrections over a certain dollar threshold.

Transactional Data Reporting will also provide greater ease of compliance with the removal of CSP disclosures and the PRC tracking customer provision. Reporting transactional data is based upon data used to generate a standard invoice. On the other hand, navigating the PRC and CSP requirements is complex because they require industry partners to track their GSA pricing relative to all of their commercial customers, and monitor and control all of their commercial sale transactions.

#### Government Usage of Transactional Data

Four parties submitted comments related to the Government's procedures for using transactional data.<sup>134</sup> One commenter stated there will be risk to the contracting officer and asked what will happen if they do not succeed in obtaining the lowest price.<sup>135</sup> Another commenter asked how the Government will account for jurisdictional and geographic pricing variances; if there will be a mechanism to correct erroneous data; and how does GSA plan to analyze data that can rapidly fluctuate.<sup>136</sup> Two commenters asked what tools and training will be available to ensure price is not the sole award criteria.<sup>137</sup> Finally, one commenter stated this rule will lead to GSA contracting officers seeking to continually renegotiate Schedule contracts.<sup>138</sup>

*Response:* GSA is creating procedures and training to address the use of transactional data, as outlined in Section IV.<sup>139</sup> GSA will not mandate contracting officers to receive the lowest reported price when conducting best value procurements. In these forums, consideration will be given to pricing variances caused by factors such as

differing terms and conditions, places of performance, and quantity.

GSA will offer training and guidance for category managers and contracting officers. The Category Management Leadership Council has released a guidance document for category managers. The document provides "guidance for the governance, management and operations of category management, taking into consideration the inherent complexities of a Federal-wide initiative."<sup>140</sup> It does not dictate operational contracting decisions, nor does it supersede the FAR, which states a preference for "best value" solutions.<sup>141</sup> GSA is also updating relevant courseware on the Federal Acquisition Institute (FAI) and Defense Acquisition University (DAU) portals to educate both customers and GSA contracting officers on how to use the data. Similarly, the courseware on how to use the FSS program and other non-FSS GWACs and multi-agency IDIQs will be updated to educate customers on the new requirements and how they can use the data collected to buy smarter. The external courseware will also highlight the additional value transactional data offers to GSA's FSS and non-FSS contracting programs and emphasize it must be viewed in the context of each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information.

To address erroneous data, the new Transactional Data Reporting site will allow vendors more leeway to correct mistakes than the current 72A Reporting System. While sales adjustments submitted through the 72A system must be approved by the assigned IOA, vendors will be able to submit data corrections through the new site on their own, although IOAs will be notified of corrections over a certain dollar threshold.

As for evaluating rapidly changing data, GSA opted to require monthly, rather than quarterly, data reporting to improve the recency of the data. However, GSA acknowledges prices may fluctuate for reasons including, but not limited to, changing and cyclical demand. This is why, among other reasons such as varying attributes, that GSA does not have an expectation to always receive the lowest reported price.

<sup>134</sup> See *e.g.*, ARA Letter, EA Letter, Experian Letter, immixGroup Letter.

<sup>135</sup> See immixGroup Letter.

<sup>136</sup> See ARA Letter.

<sup>137</sup> See ARA Letter, Experian Letter.

<sup>138</sup> See EA Letter.

<sup>139</sup> See Section IV.D, Procedures.

<sup>140</sup> See "Government-wide Category Management, Guidance Document, Version 1.0," Office of Management Budget, May 2015, available at [https://hallways.cap.gsa.gov/information/Gov-wide\\_CM\\_Guidance\\_V1.pdf](https://hallways.cap.gsa.gov/information/Gov-wide_CM_Guidance_V1.pdf).

<sup>141</sup> Federal Acquisition Regulation section 1.102 (48 CFR 1.102).

Finally, GSA does not intend to continually renegotiate all prices based on transactional data; doing so would be an administrative burden for all parties involved. However, GSA is beginning to employ automated analysis techniques for its contract-level prices to reduce variability. For example, the new Formatted Product Tool (FPT) identifies pricing outside a range determined to be acceptable for identical items; vendors whose prices exceed the acceptable range are then notified of their comparative pricing. Currently, this initiative applies only to products, while services will be addressed at a later date. However, whether it be the FPT or other tools, it is important to note GSA intends to view pricing in a range, so renegotiations will not be triggered merely because a vendor does not meet the lowest-reported price.

#### The Price Reductions Clause Tracking Customer Provision Should Not Be Eliminated

Two commenters stated GSA should not pair Transactional Data Reporting with the removal of the PRC tracking customer provision. The first commenter stated prices paid by the Government do not necessarily equate to the best price,<sup>142</sup> while the second commenter stated the proposed rule failed to justify removing the tracking customer feature in favor of Transactional Data Reporting, noting “there is no price protection provision built into the alternative language of the proposed rule.”<sup>143</sup> Both commenters stated removing the PRC would sever the Schedules program’s link to the commercial marketplace.

GSA currently establishes price reasonableness on its FSS contracts by comparing a contractor’s prices and price-related terms and conditions with those offered to their other customers. Through analysis and negotiations, GSA establishes a favorable pricing relationship in comparison to one of the contractor’s customers or category of customers. Contractors are then required, under the PRC, to monitor their pricing over the life of the contract and provide the Government with the same price reductions they give to the class of commercial customers upon which the original contract award was predicated.<sup>144</sup> In addition to the tracking customer requirement, the PRC allows vendors to voluntarily reduce prices to the Government and for the Government to request a price reduction

at any time during the contract period, such as where market analysis indicates that lower prices are being offered or paid for the same items under similar conditions.

In the proposed rule, GSA moved to couple the FSS Transactional Data Reporting clause with a new alternate version of the PRC that did not include the tracking customer provision. This new alternate PRC would only retain the Government’s right to request price reductions and the contractor’s right to offer them. The rationale for this idea was explained in the proposed rule **Federal Register** notice:

GSA believes the collection and use of transactional data may be a more efficient and effective way for driving price reductions on FSS buys than through use of the tracking customer mechanism. In addition to avoiding the challenges associated with the tracking customer mechanism described above, the transactional data reporting clause would allow for greater reliance on horizontal pricing in the FSS program so that GSA and its customers can easily evaluate the relative competitiveness of prices between FSS vendors. Moreover, the transactional data reporting clause, if used as an alternative to tracking customer mechanism, could significantly reduce contractor burden. The Chief Acquisition Officers Council recently conducted an Open Dialogue through an online platform on improving how to do business with the Federal Government. Contractors pointed to the price reductions clause as one of the most complicated and burdensome requirements in Federal contracting, and GSA’s own estimates suggest FSS contractors spend over 860,000 hours a year (at a cost of approximately \$58.5 million) on compliance with this clause.<sup>145</sup>

One commenter acknowledged the benefits of transactional data to impact pricing but stated the new Transactional Data Reporting clause will not require vendors to offer price reductions based upon transactional data, in contrast to the PRC, which has protections to require FSS vendors to offer price reductions following a triggering event. In the proposed rule, GSA also stated it found only 3 percent of price reduction modifications were tied to the tracking customer feature, while approximately 78 percent of those modifications were voluntary, resulting from commercial pricelist adjustments and market rate changes.<sup>146</sup> The commenter responded to these claims by arguing many of the voluntary price reduction modifications may have been requested in order to comply with the PRC, as well as noting that GSA did not quantify the savings resulting from the modifications tied to the tracking customer feature.

Additionally, the commenter stated a more comprehensive analysis of the PRC’s values and benefits is needed before acting to remove the tracking customer feature. Finally, the commenter questioned the methodology used to form the PRC burden estimates included in the 2012 information collection request (ICR), which relied upon a survey conducted by The Coalition for Government Procurement. GSA included the 2012 ICR burden estimates in its calculation that resulted in a net burden reduction, but the commenter stated the underlying survey did not use a representative sample as it included responses from less than 1 percent of FSS contractors.<sup>147</sup>

*Response:* Pricing disclosures, such as the CSP and PRC, have served as the bedrock of the Schedules program pricing approach at least as far back as the 1980s. With limited other means of data collection available, they offered a way to ensure fair and reasonable pricing through the life of a contract with the goal of achieving most favored customer pricing. However, changes in the federal marketplace have eroded the effectiveness of these practices over time. Of particular note are the explosive growth of services, increase in share of contracts held by resellers rather than manufacturers, and establishment of elaborate structures by contractors seeking to limit potential liability. Moreover, due to the various exceptions included in the PRC, the tracking customer feature ties pricing for reductions to sales of single items and plays little role in blanket purchase agreement and order purchases reflecting volume sales. Further, many products sold under the FSS program are commercial-off-the-shelf (COTS) products or other commercial items for which the Government is not a market driver.

Using transactional data will be a more efficient and effective way for driving price reductions. In addition to avoiding the challenges associated with the tracking customer mechanism described above, the transactional data reporting clause would allow for greater reliance on horizontal pricing in the FSS program so that GSA and its customers can easily evaluate the relative competitiveness of prices between FSS vendors. Although this rule removes the PRC’s price protection provision, order-level competition and transparency will proactively achieve the same objective without relying on retroactive enforcement. Companies seeking to win Schedules business will offer discounts or better value than their

<sup>142</sup> See POGO Letter.

<sup>143</sup> See GSA OIG Letter.

<sup>144</sup> General Services Administration Acquisition Regulation clause 552.238-75 (48 CFR 552.238-75).

<sup>145</sup> See GSAR Case 2013-C504; (80 FR 11619 (Mar. 4, 2015)).

<sup>146</sup> *Id.*

<sup>147</sup> See GSA OIG Letter.

competitors. Currently, the lack of transparency encourages vendors to offer inconsistent pricing to federal buyers. In contrast, the availability of transactional data will mean all federal buyers may be rewarded by the success of a single buyer. In turn, competing companies will have a better understanding of what it takes to win federal business and will therefore submit stronger offers. GSA's successful use of transactional data to date has shown the benefits of horizontal price analysis will outweigh the value of the PRC. While the Government often recoups millions of dollars through PRC enforcement, the American taxpayer may save billions of dollars as the Government leverages transactional data.

However, initiating Transactional Data Reporting in conjunction with the existing PRC and CSP disclosure requirements would be unduly burdensome and likely counterproductive. For example, performance under the Office Supplies 3 (OS3) vehicle began in Fiscal Year 2015. Like its predecessor, OS2, OS3 relies on transactional data and horizontal pricing techniques to drive savings. But unlike the Schedules-based OS2, OS3 is a standalone IDIQ that does not include the traditional FSS CSP and PRC requirements. As such, OS3's pricing is 17 percent lower than its predecessor's prices.<sup>148</sup> This reinforces the case for coupling Transactional Data Reporting with the removal of the CSP and PRC requirements, which will provide a \$32 million a year burden reduction for FSS pilot vendors.<sup>149</sup>

To preserve its link to the commercial marketplace, GSA is posting new GSAM guidance for FSS contracting officers to use when relying on transactional data in lieu of CSP disclosures and the basis of award enforced by the PRC. The new guidance will include an order of preference for that includes prices paid information on contracts for the same or similar items; contract-level prices on other FSS contracts or Government-wide contracts for the same or similar items; and commercial data sources

providing publicly available pricing information. FSS contracting officers will also still have the ability to request additional pricing information such as "data other than certified cost or pricing data" (as defined at FAR 2.101<sup>150</sup>) in accordance with FAR 15.404–1(b)(2)(vii)<sup>151</sup> when the offered prices cannot be determined to be fair and reasonable based on the data found from other sources.

With respect to the 2012 survey sample size, GSA acknowledges this concern but did not base its projections solely on the survey. The PRC projections were recently reevaluated for the renewal of the related information collection request and increased from \$59 million<sup>152</sup> to \$74 million, if the PRC were to apply to all GSA FSS contracts.<sup>153</sup>

#### Reporting Frequency

Two parties submitted comments related to the proposed reporting frequency. GSA proposed for non-FSS vendors subject to the rule to report sales monthly within 15 calendar days after the end of the calendar month and to remit any Contract Access Fee (CAF) due within 15 calendar days after the end of the calendar month. For FSS vendors, GSA proposed that they report sales monthly within 15 calendar days after the end of the calendar month and to remit any Industrial Funding Fee (IFF) due within 30 calendar days after the end of each quarter.

The first commenter stated the proposed 15-day reporting window did not provide vendors enough time to prepare and review the data to be reported. This commenter also stated

<sup>150</sup> Federal Acquisition Regulation section 2.101 (48 CFR 2.101).

<sup>151</sup> Federal Acquisition Regulation section 15.401–1(b)(2)(vii) (48 CFR 15.404–1(b)(2)(vii)).

<sup>152</sup> The 2012 information collection did not provide a cost burden estimate, but if the same hourly rate (\$68) was applied to the 2012 time burden, the 2012 cost burden would have been \$59,086,560.

<sup>153</sup> The CSP and PRC burden estimates are from Information Collection 3090–0235, FSS Pricing Disclosures. The total annual public reporting burden for the CSP and PRC, excluding FSS vendors participating in the Transactional Data Reporting pilot, is \$57.66 million, \$41.73 million of which is attributed to the PRC. If FSS pilot vendors were still subject to the CSP and PRC reporting requirements, the total annual public reporting burden would be \$101.69 million, of which \$73.73 million would be attributed to the PRC. The FSS pilot vendors' share of the total CSP and PRC reporting burden is based upon their share of the GSA FSS fiscal year 2015 sales volume, 43.2 percent. The annual \$44.03 million reporting burden reduction attributed to this rule is 43.2 percent of the \$101.69 million annual reporting burden if it were applied to the entire GSA FSS program. More information about Information Collection 3090–0235 can be found at <http://www.reginfo.gov/public> by searching "ICR" for "3090–0235".

the inconsistency between monthly reporting and quarterly payments may be unnecessarily confusing for vendors.<sup>154</sup> The second commenter stated GSA should reconsider the frequency, as monthly reporting is excessive, and particularly duplicative for service-providers whose prices may not change over the course of year; the commenter suggested having professional services vendors only report once or twice a year.<sup>155</sup>

*Response:* GSA considered the comment relating to the 15-day reporting window and agrees it is insufficient. Therefore, the new reporting clauses require vendors to report sales within 30 calendar days after the end of each calendar month.

With respect to monthly reporting versus quarterly payment, GSA opted to not require monthly payment for the FSS clause (GSAR 552.238–74 Alternate I) because doing so would be disproportionately harmful for small businesses, many of whom remit fees based on accrued billings before they actually receive payments from their Government customers. Payment frequency is not addressed in the non-FSS clause (GSAR 552.216–75) but vendors will have at least 30 days after the last day of the month to remit fees, as applicable.

Finally, GSA chose not to require less frequent reporting because doing so would lessen the impact of transactional data, which becomes less actionable as time passes.

#### Recommended Changes to Regulatory Text

Two commenters provided suggested changes to GSA's regulatory text. The first commenter stated GSA must update GSAR Figure 515.4–2<sup>156</sup> and GSAR section 538.272<sup>157</sup> to address the proposed PRC changes. This commenter also stated the sections of the basic PRC that were retained in the new PRC Alternate II, which allow the Government to seek price reductions and a contractor to offer them, are not necessary because both parties would normally have these rights during negotiations.<sup>158</sup>

The second commenter suggested two changes to the regulatory text. The first change would replace "Offerors must include the CAF in their prices" with "The CAF will be charged as a separate and distinct line item on every order"

<sup>154</sup> See ABA Letter.

<sup>155</sup> See Abt Letter.

<sup>156</sup> General Services Administration Acquisition Regulation Figure 515.4–2 (48 CFR 515.4–2).

<sup>157</sup> General Services Administration Acquisition Regulation section 538.272 (48 CFR 538.272).

<sup>158</sup> See ABA Letter.

<sup>148</sup> GSA analyzed pricing awarded through August 31, 2015 in its analysis.

<sup>149</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

in paragraph (c) of the proposed non-FSS Transactional Data Reporting clause, 552.216–75. The second suggestion was to insert “or services” in the description of contract sales “and sales made to other contractors authorized under FAR part 51 or the FAR part 51 deviation authorities” in the last sentence of paragraph (a)(1) of the proposed FSS Transactional Data Reporting clause, 552.238–74 Alternate I.<sup>159</sup>

*Response:* GSA concurs with the suggested changes for GSAR Figure 515.4–2 and GSAR section 538.272 and is subsequently amending those sections. The prescription for Figure 515.4–2 has been revised to only be required when the basic clause 552.238–74 Industrial Funding Fee and Sales Reporting is in solicitations and contracts. Additionally, GSAR section 538.272 has been changed to only apply to the basic PRC and Alternate I; the new PRC Alternate II, created by this rule, is not included.

As for the suggested updates to GSAR clause 552.216–75, GSA no longer instructs offerors to include the CAF in their prices because many non-FSS programs include the CAF as a separate line item. However, GSA wants its non-FSS contract programs to have the flexibility to structure the CAF to meet their business needs, so it is instead choosing to provide the contractor with relevant instructions within 60 days of award or inclusion of this clause in the contract.

With respect to the suggestions to paragraph (a)(1) for GSAR clause 552.238–74 Alternate I, GSA has removed the definition for “contract sale” and instead included similar language in paragraph (c)(3).

“Contract sale” was removed from the definitions because this clause requires contractors to report transactional data, not “contract sales” as required by the basic version of GSAR clause 552.238–74.

#### Transactional Data Reporting on Cost Reimbursable Contracts

*Comment:* Two commenters stated the rule should exclude cost reimbursable contracts.<sup>160</sup> One commenter stated cost-type contracts should be excluded because the pricing will be based on Defense Contract Audit Agency pricing practices. The other commenter stated collecting data on these contracts will not be useful because the cost elements will be unique and the contracting officer already receives the information

upfront to make pricing determinations.<sup>161</sup>

*Response:* GSA will only collect data on cost reimbursable contracts awarded under contracts subject to clause 552.216–75, as cost-type contracts are not permitted under the Schedules program. GSA recognizes cost reimbursable data may not have the same utility as data collected under time and materials and labor hour orders, but there are still numerous benefits. For example, the Government can use this data to analyze its consumption patterns, evaluate and compare purchasing channels, and identify best-in-class solutions. Thereafter, the Government can leverage its buying power and demand management strategies to achieve taxpayer savings as it concentrates its purchases through fewer channels, while vendors realize lower administrative costs.

#### Other Comments

The following are comments submitted by a single party and GSA’s corresponding responses.

*Comment:* A commenter stated vendors “should pay back the overcharge part of the time, back to the taxpayers with a hefty fine included.”<sup>162</sup>

*Response:* GSA does not concur because the comment is outside the scope of this rule.

*Comment:* GSA cannot claim the Multiple Award Schedule Advisory Panel recommendation as a mandate for this rule because panel members expressed concern that price comparison tools would have to provide accurate comparisons.<sup>163</sup>

*Response:* The Panel reference in the proposed rule **Federal Register** notice referred to a recommendation to remove the PRC “as the GSA Administrator implements recommendations for competition and price transparency at the Schedule contract level and the order level.”

*Comment:* One commenter stated this rule is inconsistent with the Federal Acquisition Streamlining Act of 1994 (FASA)<sup>164</sup> and the subsequent procedures in FAR Part 12, which aims to “establish policies more closely resembling those of the commercial marketplace.”<sup>165</sup>

*Response:* GSA’s intention is to further align itself with commercial buying practices. Horizontal price

analysis is a common technique used by commercial firms and individual citizens, and one that GSA plans to further leverage through the use of transactional data. To the contrary, the removal of CSP disclosures and the PRC tracking customer provision, which both predate FASA, are an attempt, in conjunction with horizontal pricing techniques, to harmonize GSA policies with the FAR and commercial buying practices.

*Comment:* One commenter expressed concern that GSA is planning to eliminate the Schedules program and will require vendors to provide transactional data from commercial accounts.<sup>166</sup>

*Response:* GSA is not planning on eliminating the Schedules program and will not require vendors to provide transactional data from commercial accounts.

*Comment:* GSA should slow down implementation of the rule to spend more time working with industry on its impacts.<sup>167</sup>

*Response:* GSA has already undertaken a lengthy process to implement Transactional Data Reporting, starting with the rulemaking process that included a **Federal Register** notice of proposed rulemaking and a public meeting, and continuing with a pilot that will allow GSA to evaluate the program’s effectiveness and collect stakeholder feedback as it is implemented.

*Comment:* One commenter stated details regarding the pilot’s evaluation metrics and expansion are undefined.<sup>168</sup>

*Response:* GSA will use evaluation metrics including, but not be limited to, changes in price, sales volume, and small business participation, as well as macro use of transactional data by category managers and teams to create smarter buying strategies such as consumption policies. GSA’s Senior Procurement Executive will regularly evaluate progress against these metrics in consultation with the Administrator for Federal Procurement Policy and other interested stakeholders to determine whether to expand, limit, or discontinue the program. No expansion of the pilot or action to make Transactional Data Reporting a permanent fixture on the Schedules will occur prior to the careful evaluation of at least one year of experience with the pilot.

*Comment:* The proposed rule does not account for the resources expended by vendors and Government to implement

<sup>161</sup> See RTI Letter.

<sup>162</sup> See Lynch Letter.

<sup>163</sup> See Allen Letter.

<sup>164</sup> Public Law 103–355.

<sup>165</sup> Federal Acquisition Regulation section 12.000 (48 CFR 12.000).

<sup>166</sup> See IOPFDA Letter.

<sup>167</sup> *Ibid.*

<sup>168</sup> See GSA OIG Letter.

<sup>159</sup> See deMers Letter.

<sup>160</sup> See e.g., CGP Letter, RTI Letter.

the requirements in the event GSA chooses to abandon the pilot and revert back to its current practices.<sup>169</sup>

*Response:* GSA anticipates Transactional Data Reporting will be successful but recognizes its assumptions should be tested, hence its preference for a pilot. CSP disclosures and the basic versions of the PRC and FSS sales reporting clause (552.238-74) are being retained during the course of the pilot and will be available for use if GSA chooses not to continue Transactional Data Reporting. However, the agency is continually improving its tools and procedures and may opt to retain facets of this rule, or rely on new tools, if either proves to be more effective than the current pricing disclosure practices. Impacts on industry partners will be given significant consideration as these decisions are made.

*Comment:* Transactional Data Reporting should exclude blanket purchase agreements (BPAs) because there will likely be quantity discounts offered and fixed price-type contracts because the prices are not relevant as the terms are determined based on unique agency requirements.<sup>170</sup>

*Response:* GSA is collecting contract and BPA numbers in order to tie the transactional data to records in the Federal Procurement Data System (FPDS). Doing so will not only make the transactional data more useful, but will also reduce the number of data elements vendors need to report to GSA. As FPDS is upgraded, GSA intends to evaluate whether any of the data elements currently included in the new reporting clauses can be excluded. For BPAs in particular, policy and training will instruct contracting officers to evaluate the data in the context of each offer, taking into account desired terms and conditions, quantity discounts, unique attributes, socio-economic considerations, and other relevant information.

Finally, GSA recognizes fixed price data will have limited value compared to data reported for other contract types, but there are still numerous benefits. The Government can use fixed price data to analyze its consumption patterns, evaluate and compare purchasing channels, and identify best-in-class solutions. Thereafter, the Government can leverage its buying power and demand management strategies to achieve taxpayer savings as it concentrates its purchases through fewer channels, while vendors realize lower administrative costs. Fixed price

data will also be useful for market research; for example, the data will be especially useful when combined with information from the eBuy statement of work (SOW) library.

*Comment:* The rule should impose limits on the timeframe for which data is reported and used by contracting officers for price analysis. The commenter provided the following example: “[I]f a company currently has a contract with a 10-year period of performance and is in contract year 4, the contractor should not be required to report prices paid from inception-to-date. In essence, the rule should not be retroactive.”<sup>171</sup>

*Response:* Vendors are required to report data based on invoices issued or payments received against applicable invoices during the month. This ensures the data is relatively recent, which provides buyers with a more accurate picture of the marketplace.

*Comment:* One commenter offered the following recommendations to reduce price variability without implementing this rule: (1) Reject offers for products that fall outside of an acceptable pricing range compared to the contract-prices for identical products; (2) assure offers are authorized resellers; (3) encourage vendors to update their GSA Advantage!<sup>®</sup> catalogs and remove products that are no longer available; (4) increase customer training to reinforce the requirements of FAR subpart 8.4; (5) collect data internally to test transactional data concepts; and (6) eliminate the PRC.<sup>172</sup>

*Response:* GSA’s responses to each item are as follows:

(1) GSA concurs. It is pursuing this objective with its Formatted Product Tool (FPT), which identifies pricing outside a range determined to be acceptable for identical items; vendors whose prices exceed the acceptable range are then notified of their comparative pricing.

(2) As noted by the commenter in their full comment, GSA requires offerors to submit letters of supply/commitment. GSA works to remedy situations when it is notified that a vendor is not an authorized reseller.

(3) GSA currently encourages vendors to maintain accurate GSA Advantage!<sup>®</sup> catalogs. GSA is also working on implementing updates to GSA Advantage!<sup>®</sup> that will make it easier for vendors to maintain current catalogs.

(4) GSA is updating relevant courseware on the Federal Acquisition Institute (FAI) and Defense Acquisition University (DAU) portals to educate

both customers and GSA contracting officers on how to use the data. Similarly, the courseware on how to use the FSS program and other non-FSS GWACs and multi-agency IDIQs will be updated to educate customers on the new requirements and how they can use the data collected to buy smarter. The external courseware will also highlight the additional value transactional data offers to GSA’s FSS and non-FSS contracting programs and emphasize it must be viewed in the context of each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information.

(5) GSA considered relying on data from transactions completed through GSA Advantage!<sup>®</sup>, but it only accounts for about 1 percent of Schedule sales. Thus, the breadth of data is not adequate to meet the Government’s objectives.

(6) As noted previously, GSA is removing the PRC tracking customer provision and CSP disclosures for vendors subject to the Transactional Data Reporting requirements, in part to reduce costs and simplify procedures for industry partners.

*Comment:* One commenter stated GSA should provide guidelines for using transactional data, as the proposed use contradicts the proposal analysis techniques found in FAR 15.404-1.<sup>173</sup>

*Response:* GSA is developing training for Government buyers and implementing new procedures for its FSS contracting officers. Training and guidance deployed in connection with this rule emphasizes the importance of considering the best overall value (not just unit price) for each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information. Additionally, the new GSAM guidance released in tandem with this rule instructs FSS contracting officers to follow the techniques found in FAR 15.404-1(b).<sup>174</sup>

*Comment:* One commenter expressed concern that GSA is announcing elements of the rule implementation on its blog, GSA Interact, and urged GSA to release such details through the **Federal Register**.

*Response:* GSA is committed to transparency and appreciates concerns regarding communication related to this rule. As such, we conducted a public meeting regarding the rule on April 17,

<sup>169</sup> *Id.*

<sup>170</sup> See CGP Letter.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> See ABA Letter.

<sup>174</sup> Federal Acquisition Regulation section 15.404-1(b) (48 CFR 15.404-1(b)).

2015 and included additional details in this **Federal Register** notice. However, the Interact platform, as well as other Internet forums, help GSA remain transparent by providing quick, efficient methods to disseminate to, and receive information from, its stakeholders. GSA will continue to make rulemaking-related announcements through the **Federal Register**. Additionally, announcements regarding reportable data elements will be posted in the **Federal Register**. Yet, GSA intends to continue using other mediums, as appropriate, to help it maintain a dialog with its stakeholders and promote transparency.

*Comment:* It is unclear if the proposed data element, “Non-Federal Entity, if applicable”<sup>175</sup> applies to authorized state and local governments, authorized prime contractors purchasing under the FAR Part 51 authority, or another entity.<sup>176</sup>

*Response:* “Non-Federal Entity, if applicable,” in both Transactional Data Reporting clauses (GSAR 552.216–75 and 552.238–74 Alternate I), applies to any non-federal user authorized to purchase from the respective contract. For the FSS clause, this can include authorized state and local users under the Cooperative Purchasing program or contractors purchasing through the FAR Part 51 authority.<sup>177</sup>

*Comment:* One commenter expressed concern that GSA’s ability to unilaterally add data elements to the reporting clauses will add uncertainty for contractors.<sup>178</sup>

*Response:* The new GSAM guidance released in tandem with this rule requires FSS contracting officers and GSA program offices seeking to add new standard data elements to the reporting clauses to coordinate with the applicable category manager and obtain approval from the respective head of contracting activity (HCA) and GSA’s Senior Procurement Executive. The clauses themselves also note GSA Senior Procurement Executive approval is required to add new data elements. If new data elements are approved, announcements will be made in the Vendor Support Center Web site,<sup>179</sup> and additional forums as necessary.

*Comment:* GSA should limit the rule to products and services that have “substantially similar pricing

structures” for a “defined pilot program.”<sup>180</sup>

*Response:* GSA considered whether Transactional Data Reporting should be applied only to certain subsets of contracts. The proposed requirement was retained for GSA’s non-FSS Governmentwide vehicles because most of those contracts currently have transactional data reporting requirements that exceed those created through this rule. However, the new applicable Transactional Data Reporting clause (GSAR clause 552.216–75) will provide a consistent reporting mechanism for future non-FSS vehicles, or for current vehicles that adopt the new clause. For FSS contracts, an analysis was conducted to determine whether Transactional Data Reporting should be considered for all FSS contracts, or only those that include products or services that would allow straightforward comparisons, such as commodities with standard part numbers. While transactional data is most useful for price analysis when comparing like items, it does not mean the data is not useful when perfect comparisons cannot be made. Government buyers and FSS contracting officers will still use the data for price analysis and market research, and category managers will use the data for consumption analysis to form demand management strategies, regardless of whether the data can be used for perfect comparisons. An example is the ability to compare labor rates across contract vehicles, which is beginning to bear fruit in the form of reduced contract duplication. Consequently, GSA decided not to limit the prescription of Transactional Data Reporting to certain Schedules or Special Item Numbers.

*Comment:* One commenter cited several concerns regarding the rule’s potential application to transportation services providers for the Federal Government. Specifically, the commenter asked whether the rule will apply to GSA’s freight management program; does the rule apply to contracts between federal vendors and their suppliers; and does the rule cover commercial-to-commercial transactions. The commenter also stated the rule is outside of GSA’s jurisdiction; is an unwarranted expansion of the former alternation of rates doctrine; is a violation of antitrust principles, and is implementing a new fee (the Contract Access Fee) that will be an unauthorized burden on federal vendors.<sup>181</sup>

*Response:* This rule applies to certain Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition Contracts (GWACs), and Governmentwide Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts awarded by GSA. This rule does not require vendors to report transactional data on orders placed outside of these contracts and does not require them to report transactional data generated for transactions between vendors and their suppliers, or commercial-to-commercial transactions.

GSA has the authority to issue regulations relating to its contracting programs. GSA’s primary statutory authorities for the FSS program are 41 U.S.C. 152(3), Competitive Procedures, and 40 U.S.C. 501, Services for Executive Agencies. For GWACs, GSA is an executive agent designated by the Office of Management and Budget pursuant to 40 U.S.C. 11302(e). Furthermore, 40 U.S.C. 121(c) authorizes GSA to prescribe regulations for its other multi-agency contracts, including Governmentwide IDIQ contracts. This rule is not an unwarranted expansion of the former alternation of rates doctrine and is not a violation of antitrust principles.

Lastly, the rule is not creating a new Contract Access Fee (CAF). Currently, GSA charges ordering activities a CAF on many of its Governmentwide Acquisition Contracts (GWACs) and Governmentwide Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts, such as Alliant and OASIS. The CAF serves a similar purpose for those contracts as the Industrial Funding Fee (IFF) does for the FSS program. These fees are generally remitted by vendors on behalf of the ordering activity but are not actually paid by the vendor. Future contracts including GSAR clause 552.216–75 may apply a CAF, but the CAF will not be applied primarily because of the clause’s inclusion.

*Comment:* Finally, a former Multiple Award Schedule Advisory Panel member expressed his support for the rule, noting “GSA should be encouraged to implement these changes and move forward with the improvement of the management of its Government-wide contract vehicles. . . .”<sup>182</sup>

*Response:* GSA appreciates the support and will continue to improve its contract solutions to serve its Government customers and the American taxpayer.

## VI. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 of September 30, 1993, Regulatory

<sup>175</sup> See GSAR Case 2013–G504; Docket 2014–0020; Sequence 1 (80 FR 11619 (Mar. 4, 2015)).

<sup>176</sup> See ABA Letter.

<sup>177</sup> Federal Acquisition Regulation subpart 51.1 (48 CFR 51.1).

<sup>178</sup> *Id.*

<sup>179</sup> The Vendor Support Center can be accessed at <https://vsc.gsa.gov>.

<sup>180</sup> See ABA Letter.

<sup>181</sup> See NMFTA Letter.

<sup>182</sup> See Perry Letter.

Planning and Review, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 6(b) of the E.O. requires the OMB Office of Information and Regulatory Affairs (OIRA) to review regulatory actions that have been identified as significant regulatory actions by the promulgating agency or OIRA.<sup>183</sup> This final rule has been determined to be a significant regulatory action and was therefore subject to OIRA review. However, this rule is not a “major rule,” as defined by 5 U.S.C. 804.

E.O. 13563 of January 18, 2011, Improving Regulation and Regulatory Review, supplements and reaffirms the principles of E.O. 12866 of September 30, 1993. Section 1(c) of E.O. 13563 directs agencies to “use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” Accordingly, GSA offers the following summary of the costs and benefits associated with this final rule.

#### *Transactional Data Reporting Costs*

The total costs associated with this rule are \$15 million per year for participating vendors and \$2 million per year for the Federal Government.<sup>184</sup> These costs are attributable to GSA’s Federal Supply Schedules and its other non-FSS Governmentwide IDIQ vehicles as follows:

- For FSS contracts, the new reporting requirements will be initially implemented for select Schedules and Special Item Numbers on a pilot basis. GSA estimates the costs associated with these requirements to be \$12 million per year for vendors participating in the FSS pilot.<sup>185</sup> However, the new

Transactional Data Reporting clause, GSAR Alternate I, 552.238–74 Industrial Funding Fee and Sales Reporting (Federal Supply Schedule), will be paired with changes to existing FSS pricing disclosure requirements. Specifically, FSS vendors subject to the Transactional Data Reporting rule will no longer provide CSP disclosures and will no longer be subject to the PRC tracking customer provision. GSA estimates the total burden of these existing FSS pricing disclosure requirements to be \$102 million per year, with FSS pilot vendors accounting for \$44 million of that burden. Therefore, replacing the existing FSS pricing disclosure requirements with transactional data reporting results in a net burden reduction of approximately \$32 million per year for FSS pilot vendors.<sup>186</sup> Furthermore, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government’s burden by about \$3 million per year.<sup>187</sup>

- Non-FSS Governmentwide IDIQs, including GWACs, will be subject to GSAR clause 552.216–75 Transactional Data Reporting. GSA estimates the costs for vendors holding these contracts to be up to almost \$3 million per year.

The estimated costs for vendors affected by this rule are limited to the time needed to implement reporting procedures and fulfill monthly reporting obligations. Implementation costs include the time to configure systems, train personnel, and institute procedures. Monthly reporting costs include the time needed for identifying reportable data, performing quality assurance checks, and transmitting the data. GSA’s burden estimates account for vendors that may want to hire personnel and update information technology systems to meet the reporting requirements. Existing FSS vendors participating in the Transactional Data Reporting pilot will initially be the only ones that will absorb new reporting burdens in the

course of their current contract performance. However, these vendors will not necessarily need to hire additional personnel because the rule provides a net burden reduction with the removal of the CSP and PRC disclosure requirements. Likewise, the rule does not require vendors to acquire information technology tools, although some vendors, particularly those with higher sales volume, may choose to adopt automated systems to meet the reporting requirement. Nevertheless, the new FSS reporting clause will be incorporated into existing contracts through bilateral modifications, so vendors may choose not to participate. Otherwise, the new Transactional Data Reporting clauses will apply to new contracts awarded under the pilot Schedules and Special Item Numbers and new contracts awarded under non-FSS Governmentwide IDIQ programs. As such, these new vendors will have an opportunity to evaluate the costs associated with meeting these reporting requirements prior to entering into the contract.

#### *Transactional Data Reporting Benefits*

This rule will save taxpayer dollars because it supports smarter buying practices and will improve pricing. Transactional Data Reporting supports the Government’s shift towards category management and provides vendors with a more open marketplace.

GSA has found transactional data to be instrumental for improving competition, lowering pricing, and increasing transparency through its Federal Strategic Sourcing Initiative (FSSI) contracts. GSA does not expect this pilot to replicate or exceed the discounts achieved through FSSI—often up to 30 percent lower than the comparable Schedule prices—mostly because of the diversity of offerings in the greater Schedules program. Yet, GSA does anticipate lower prices in addition to other key benefits. For instance, it supports the category management principles of optimizing existing contract vehicles and reducing contract duplication. The Government can use transactional data to analyze its consumption patterns, evaluate and compare purchasing channels, and identify best-in-class solutions. Thereafter, the Government can leverage its buying power and demand management strategies to achieve taxpayer savings as it concentrates its purchases through fewer channels, which will in turn provide lower administrative costs for vendors.

Today, vendors incur heavy upfront costs when submitting an offer for an FSS contract, which is frequently the

<sup>183</sup> E.O. 12866 section 3(f) states, “‘Significant regulatory action’ means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.”

<sup>184</sup> See Section VIII.B for a discussion of the burden estimates in accordance with Paperwork Reduction Act requirements.

<sup>185</sup> *Id.*

<sup>186</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>187</sup> \$3 million is the result of the Government’s annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).



entry-point to the greater federal marketplace. They are required to supply GSA contracting officers with CSP disclosures and set up mechanisms to track their sales in order to comply with the PRC. These costs are incurred before a vendor wins any federal dollars through the FSS contract. In contrast, vendors participating in Transactional Data Reporting will only incur costs after receiving an order against their FSS contract, and the costs will only increase when they win more orders. Thus, GSA is removing barriers to entry into the federal marketplace, which GSA believes is particularly beneficial to small businesses that have fewer resources for upfront investments. With Transactional Data Reporting, GSA will use the data it collects, along with data from other sources, to determine whether an offer is fair and reasonable. As a result, fewer vendors will need to rely on outside support when preparing an offer for a GSA contract vehicle.

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

## VII. Regulatory Flexibility Act

GSA expects this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it involves providing transactional data on FSS and non-FSS orders that may ultimately affect the end pricing of products offered through GSA. However, the cost to comply with the additional reporting requirement will be offset by the benefits provided by the transactional data, such as greater insight and visibility into customer buying habits and knowledge of market competition. Additional benefits to FSS vendors include the addition of the Transactional Data Reporting clause (GSAR clause 552.238–74 Alternate I) being coupled with the elimination of Commercial Sales Practices (CSP) disclosures and an alternate version of the Price Reductions clause (PRC) (GSAR clause 552.238–75) that does not include the basis of award “tracking customer” requirement.

Following receipt of the public comments in response to the proposed rule, GSA concluded the horizontal

pricing ability afforded by Transactional Data Reporting would not only exceed the PRC tracking customer provision benefits, it could also alleviate the need for CSP disclosures when combined with automated commercial data sources, new data analytic tools, and improved price analysis policy. For the Schedules pilot, pairing Transactional Data Reporting with a removal of CSP disclosures and the PRC tracking customer provision will result in an average annual burden reduction of approximately \$32 million for participating FSS vendors.<sup>188</sup> Furthermore, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government’s burden by about \$3 million a year.<sup>189</sup>

Providing the required transactional data will impose significant economic impact on all vendors, both small and other than small, doing business on GSA-managed contracts. Therefore, Final Regulatory Flexibility Analysis (FRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

### 1. Statement of the need for, and the objectives of, the rule.

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to require vendors to report transactional data generated from orders placed against certain contracts. The primary changes are the creation of three clauses: 552.216–75 Sales Reporting and Fee Remittance; 552.238–74 Industrial Funding Fee (IFF) and Sales Reporting, Alternate I; and 552.238–75 Price Reductions, Alternate II.

Clauses 552.238–74, Alternate I and 552.216–75 will require vendors to provide transactional data from orders placed against GSA’s Governmentwide contracts. Clause 552.238–74, Alternate I applies to orders placed against Federal Supply Schedule (FSS) contract vehicles. FSS vendors that agree to the new transactional data reporting requirement will have their contracts modified to include clause 552.238–75 Price Reductions, Alternate II, which removes the basis of award tracking requirement found in

<sup>188</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>189</sup> \$3 million is the result of the Government’s annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).

the basic Price Reductions clause (PRC). These vendors will also no longer be required to provide Commercial Sales Practices (CSP) disclosures, as required by GSAR section 515.408. Removing these two disclosure requirements in favor of a new transactional data reporting clause will provide a net burden reduction for FSS vendors.

The other transactional data reporting clause, 552.216–75, applies to GSA’s non-FSS contract vehicles—Governmentwide Acquisition Contracts (GWACs) and Multi-Agency Contracts (MACs). Most of these contracts already contain transactional data reporting requirements and are not subject to the FSS PRC and CSP disclosure requirements. Once implemented, the new GSAR reporting clauses will further the objective of using actual transactional data in order to negotiate better pricing for GSA’s Governmentwide contracting programs and enable GSA to provide federal agencies with market intelligence and expert guidance in procuring goods and services from GSA acquisition vehicles. Additionally, collecting transactional data will allow customers to analyze spending patterns and develop new acquisition strategies to fully leverage the Government’s spend. Finally, reducing FSS pricing disclosure requirements will provide vendors a net burden reduction, make FSS contracts easier to administer, and improve accessibility for new vendors.

### 2. Summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

GSA received 26 comment letters on the proposed rule, including comments from industry associations, vendors, individuals, Government stakeholders, and other interested groups. Commenters representing industry interests cited the high reporting burden imposed by the rule, while stating GSA was underestimating the potential burden. However, these commenters supported the removal of the PRC basis of award tracking customer requirement.

Other areas with significant industry concern included:

- The retention, and potential increase, of CSP disclosures.
- Releasability of the transactional data to the public.
- Using transactional data for other than one-to-one comparisons.

### 3. Summary of the assessment of such issues, and a statement of any changes made to the proposed/interim rule as a result of such comments.

To address concerns with its Transactional Data Reporting burden estimates, GSA reevaluated its Paperwork Reduction Act burden estimation methodology and substantially increased its burden estimates. These higher burden projections were a significant concern and they reinforced the need to couple Transactional Data Reporting with other significant forms of burden reductions.

However, Transactional Data Reporting could negate that disclosure burden because not only does it exceed the PRC tracking customer provision benefits, it could also alleviate the need for CSP disclosures when combined with automated commercial data sources, new data analytic tools, and

improved price analysis policy. Consequently, GSA decided to pair the new reporting requirements with the removal of CSP disclosures and the PRC tracking customer provision, resulting in an average annual burden reduction of approximately \$32 million for vendors participating in the FSS pilot.<sup>190</sup> GSA has also reevaluated its plans for disclosure of the reported data. Transactional data collected through the portal will be accessible only by authorized users and protected in accordance with GSA's information technology security policies. This data will be used by category managers and acquisition professionals to implement smarter buying strategies.

GSA intends to share transactional data to the maximum extent allowable to promote transparency and competition while respecting that some data could be exempt from disclosure. Accordingly, a data extract will be created for use by the general public, containing information otherwise releasable under the Freedom of Information Act; details about the public data extract will be released through a forthcoming notice in the **Federal Register**. This data will provide valuable market intelligence that can be used by vendors for crafting more efficient, targeted business development strategies that incur lower administrative costs. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties.

Finally, GSA gave consideration as to whether Transactional Data Reporting should be considered for all FSS contracts or only those that include products or services that would allow straightforward comparisons, such as commodities with standard part numbers. GSA agrees transactional data is most useful for price analysis when comparing like items, but that does not mean the data is not useful when perfect comparisons cannot be made. Government buyers and FSS contracting officers will use the data for price analysis and market research, and category managers will use the data for consumption analysis to form demand management strategies, regardless of whether the data can be used for perfect comparisons.

4. *The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule, and a detailed statement of any change made in the final rule as a result of the comments.*

The Chief Counsel for Advocacy of the Small Business Administration provided comments in response to the proposed rule;

<sup>190</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090-0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

the following is a summary of those comments and GSA's responses:

*Comment:* While GSA recognizes that this proposed rule will have a significant economic impact on a substantial number of small businesses, the Initial Regulatory Flexibility Analysis (IRFA) does not provide sufficient data for the public to examine the potential impact of the rule on small entities.

*Response:* GSA did not differentiate between small businesses and other-than-small businesses in its burden estimates because Transactional Data Reporting imposes a progressive burden-one that increases with a vendor's sales volume. Namely, monthly reporting time will increase with a vendor's applicable sales volume, as vendors with lower to no reportable sales will spend little time on monthly reporting, while those businesses with more reportable sales will face a higher reporting burden. Likewise, setup costs will be a major driver of the new reporting burden, but vendors with little to no activity on their FSS contracts will likely forgo investments in new reporting systems because the reporting burden will not be significantly more than that of the current quarterly sales reporting requirements.

However, GSA was especially mindful of small business concerns when forming this rule. For instance, tying the reporting burden to sales volume is particularly beneficial for small businesses, as they hold 80 percent of the total contracts but only account for approximately 39 percent of the sales.<sup>191</sup> Moreover, the decision to streamline the existing pricing disclosure requirements was partially motivated by the positive impact on small businesses. Unlike the new data reporting requirements, the current CSP and PRC disclosure requirements are constant, meaning vendors, especially those with a higher number of FSS contract offerings, must bear the burden even if they have little to no sales through their FSS contracts. Thus, small businesses are disproportionately affected because they account for the bulk of lower volume contracts. Moreover, small businesses, which generally have fewer resources to devote to contract management, will no longer be subjected to the complex CSP and PRC pricing disclosure requirements.

The public data extract will also benefit small businesses. GSA intends to share transactional data to the maximum extent allowable to promote transparency and competition while respecting that some data could be exempt from disclosure. The data will serve as valuable market intelligence for vendors to use for crafting more efficient, targeted business development strategies that incur lower administrative costs. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties. Details about the public data extract will be released in a forthcoming **Federal Register** notice.

*Comment:* Small businesses are concerned that the IRF A for this transactional data

<sup>191</sup> Based on fiscal year 2015 Federal Supply Schedule contract data.

collection and reporting rule does not provide them with a clear understanding of GSA's legal framework for requiring this new system.

*Response:* GSA will be implementing the Transactional Data Reporting clauses through bilateral modifications on existing contracts, meaning vendors must agree to the changes before GSA can insert a new clause in a contract. New contracts awarded under the pilot Schedules/Special Item Numbers or future Governmentwide indefinite-delivery indefinite-quantity (IDIQ) vehicles will include the new Transactional Data Reporting clauses, but vendors will have an opportunity to view the requirements before agreeing to a contract. For the Schedules, GSA is instituting this program to meet its obligations under 41 U.S.C. 152(3)(b), which states that orders and contracts awarded under the FSS program must result in "the lowest overall cost alternative to meet the needs of the Federal Government."

*Comment:* Small businesses expressed some of the similar concerns as shared by the GSA Office of Inspector General during the public forum. The IG stated that the proposed rule under estimates the burden and resources.

*Response:* As a result of these comments, GSA reevaluated its estimation methodology and recalculated the burden based on whether vendors use automated or manual systems to identify and report transactional data. An automated system is one that relies on information technology, such as an accounting system or data management software, to identify and compile reportable data. These systems can tremendously streamline the reporting process but require upfront configuration to perform the tasks, such as coding the data elements to be retrieved. Conversely, a manual system is one that incorporates little to no automation and instead relies on personnel to manually identify and compile the reportable data. An example of a manual system would be an accountant reviewing invoices to identify the reportable data and then transferring the findings to a spreadsheet. In contrast to automation, a manual system requires relatively little setup time but the reporting effort will generally increase with the vendor's sales volume.

The likelihood of a vendor adopting an automated system increases with their applicable sales volume. Vendors with little to no reportable data are unlikely to expend the effort needed to establish an automated reporting system since it will be relatively easy to identify and report a limited amount of data. In fiscal year 2015, 32 percent of FSS vendors reported \$0 sales, while another 34 percent reported average sales between \$1 and \$20,000 per month. If the rule were applied to the entire Schedules program, approximately two-thirds, or nearly 11,000 vendors, would have a lower reporting burden. However, as a vendor's applicable average monthly sales increase, they will be increasingly likely to establish an automated system to reduce the monthly reporting burden. Consequently, vendors with higher reportable sales will likely bear a higher setup burden to create an automated system, or absorb a high monthly reporting burden if

they choose to rely on manual reporting methods.

This renewed analysis led GSA to increase its burden estimates. For FSS contracts in particular—

- The projected setup time for an automated system increased from an average of 6 hours<sup>192</sup> to an average of 240 hours; and
- The projected monthly reporting time range grew from 0.3 minutes–4 hours to 0.25 hours–48 hours.

However, GSA's estimates are still considerably lower than the estimates provided through the public comments,<sup>193</sup> primarily because—

- At least two-thirds of the potential Transactional Data Reporting participants will have a relatively lower burden (e.g., vendors with lower or no sales); and
- Vendors with higher reporting volume will face lower setup times with a higher monthly reporting burden, or higher setup times with a lower monthly reporting burden. In other words, vendors will not face a higher setup burden and a higher monthly reporting burden to comply with the rule.

*Comment:* Small businesses fear that the proposed rule will have unintended consequence of further reduction of an already reduced federal small business industrial base. Small businesses in this regard point to the negative impact of Strategic Sourcing (SS) on the number of small businesses that are now participating in the federal procurement system. Some postulate that SS has not harmed the small business community citing the actual dollars being awarded to small businesses. However, while the dollars are increasing the actual participation rate of small businesses is decreasing.

*Response:* GSA will be mindful of Transactional Data Reporting's small business impacts. The initiative is being phased in on a pilot basis. GSA's Senior Procurement Executive will regularly evaluate progress against metrics, including small business participating, in consultation with the Administrator for Federal Procurement Policy and other interested stakeholders to determine whether to expand, limit, or discontinue the program. No expansion of the pilot or action to make Transactional Data Reporting a permanent fixture on the Schedules will occur prior to the careful evaluation of at least one year of experience with the pilot.

*Comment:* GSA will sort the monthly reporting of the transactional data and share it across the federal government but small businesses are concerned that the proposed rule does not contemplate privacy issues nor other proprietary business concerns. Small businesses have concerns about how transactional data will be protected from competitors.

*Response:* Transactional data reported in accordance with this rule will be accessible only by authorized Government users. GSA intends to share the transactional data with

the public to the maximum extent allowable while respecting that some data could be exempt from disclosure. Consequently, a data extract will be created for use by the general public, containing information otherwise releasable under the Freedom of Information Act (FOIA);<sup>194</sup> details about the public data extract will be released through a forthcoming notice in the **Federal Register**.

Transparency will support a dynamic marketplace by providing contractors with the business intelligence needed to identify customers, determine which products should be included on their contract pricelists, and ascertain whether their prices are competitive. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties.

However, GSA recognizes some information may be protected from public release, which led to the decision to create a public data extract, as opposed to allowing the public the same access as authorized users. The data extract will provide the public a filtered view of the data, including information that is releasable under FOIA while protecting information that is not.

*Comment:* Small business owners are concerned that this new vision of transactional data reporting and utilization will reduce the values added that they bring to an acquisition process. The proposal's new vision and the transactional proposal would seem to place price as opposed to best value as its single most important consideration for contract award. Best value has emerged over the years as a strong federal government benchmark for evaluating and awarding contracts and it allows for small businesses to compete on a more level playing field. While trying to improve the acquisition process, the government should not abandon this long established and proven acquisition tool. Price should not be the sole measure of awarding a contract.

*Response:* Transactional data will not transform the federal acquisition system into a lowest-price procurement model. The Federal Acquisition Regulation (FAR) has a stated vision "to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives."<sup>195</sup> The Government's preference will continue to be "best value," or defined in the FAR, "the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement."<sup>196</sup> Transactional data is viewed in the context of each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information. Using and understanding the data will help inform requirements definition and reduce excess consumption.

*Comment:* The proposed rule would seem to require contractors to pay a Contractor

Access Fee (CAF) fee and an industrial funding fee. The proposed rule is unclear as to how these fees interact with each other.

*Response:* The Contract Access Fee (CAF) and Industrial Funding Fee (IFF) will not be charged in tandem. The IFF is applied to GSA's Federal Supply Schedule contracts while the CAF is only applied to GSA's other Governmentwide vehicles, such as Governmentwide Acquisition Contracts (GWACs), indefinite-delivery indefinite-quantity (IDIQ), and other multi-agency contracts.

*Comment:* Because of the economic impact of this proposed regulation on a substantial number of small entities, GSA should extend the comment period for an additional sixty days and conduct field hearings in other parts of the United States.

*Response:* GSA extended the proposed rule comment period from May 4, 2015 to May 15, 2015. Additionally, the public meeting it held on April 17, 2015 in Washington, DC was accessible through an Internet simulcast to interested parties outside of the Washington, DC area. In total, the meeting was attended by 120 in-person participants and 153 remote attendees.

*Comment:* GSA should conduct a more detailed impact assessment of this proposed rule on small businesses. During the April 17, 2015 public forum, Advocacy asked GSA if an analysis had been performed on the impact of this rule on small businesses and GSA's response was to cite the number of small businesses that are on schedule and the dollar amount being awarded to these businesses. However this statement does not delve into the more structural issue of small business commodity pricing. Since most small businesses that are on a GSA schedule are value added resellers and since many of the original equipment makers are also on GSA schedules it is unclear because of the lack of data how GSA will balance the potential conflict of these two types of business entities.

*Response:* Pricing will not be GSA's sole consideration when awarding items on its Governmentwide contract vehicles, and the Government will continue to have a preference for best value solutions. However, when price is evaluated, it will be done so within a range, as GSA recognizes other factors should be taken into consideration, such as socio-economic concerns. For example, GSA is beginning to employ automated analysis techniques for its contract-level prices to reduce variability. GSA recently launched its Formatted Product Tool (FPT) that identifies pricing outside a range determined to be acceptable for identical items; vendors whose prices exceed the acceptable range are then notified of their comparative pricing. Currently, this initiative applies only to products, while services will be addressed at a later date. However, whether it be the FPT or other tools, it is important to note GSA intends to view pricing in a range, so renegotiations will not be triggered merely because a vendor does not meet the lowest-reported price.

*5. Description and an estimate of the number of small entities to which the rule will apply.*

The reporting clauses created by this rule will initially apply to a subset of the GSA's

<sup>192</sup> The proposed rule setup time estimates did not differentiate between manual and automated reporting systems.

<sup>193</sup> One commenter provided its own estimates on the reporting burden.

<sup>194</sup> 5 U.S.C. 552.

<sup>195</sup> Federal Acquisition Regulation section 1.102 (48 CFR 1.102).

<sup>196</sup> Federal Acquisition Regulation section 2.101 (48 CFR 2.101).

Federal Supply Schedule program on a pilot basis and will be available for use for all of GSA's non-FSS Governmentwide IDIQ contracts. This population consists of 6,017 contracts, of which 4,852 (81 percent) are held by small business concerns. The vast majority of these small business contracts (4,358) are under GSA's FSS program.

This rule may eventually apply to all contractors who hold GSA Federal Supply Schedule contracts and other GSA Governmentwide contract vehicles. This population consists of 20,323 contracts, 16,308 (80 percent) of which are held by small businesses. The vast majority of these small businesses contracts (15,837) are under GSA's FSS program.

6. *A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

Vendors subject to the rule will be required to report transactional data and remit fees paid by ordering activities to GSA. The data reporting responsibilities are new for FSS vendors, but most of GSA's Governmentwide non-FSS contracts already contain transactional data reporting requirements.

The reporting aspect of the rule requires vendors to identify, compile, and report transactional data—historical information encompassing the products and services delivered during the performance of a task or delivery order placed against this contract. Furnishing electronic reports is an existing requirement for all affected vendors but FSS vendors will be required to furnish more detailed information than currently required under their FSS contracts. The clauses require vendors to report data once a month—within 30 days after the last day of the end of the month.

Vendors will be responsible for remitting applicable fees paid by ordering activities to GSA. FSS vendors must remit fees four times a year (30 days after the end of the last day of each quarter) and non-FSS vendors may have to remit fees up to, but no more than, once a month. These fee remittance requirements are generally the same as what is currently required under these contracts.

The reporting clauses created by this rule will initially apply to a subset of the GSA's Federal Supply Schedule program on a pilot basis and will be available for use for all of GSA's non-FSS Governmentwide IDIQ contracts; this population consists of 6,017 contracts, of which 4,852 (81 percent) are held by small business concerns. This rule may eventually apply to all contractors who hold GSA Federal Supply Schedule contracts and other GSA Governmentwide contract vehicles; this population consists of 20,323 contracts, 16,308 (80 percent) of which are held by small businesses. These small business contract holders include SBA certified 8(a) firms; SBA certified small disadvantaged businesses; HUBZone firms; service disabled veteran-owned small businesses; veteran-owned small businesses; economically disadvantaged women-owned small businesses; and women-owned small businesses.

The professional skills needed to comply with these requirements are generally the same as those needed to comply with existing FSS and non-FSS reporting requirements and invoicing functions. Generally, reporting personnel must have an understanding of the reporting system and the transactional data they are reporting.

7. *An account of the steps taken to minimize the significant economic impact of the rule on small entities consistent with the stated objectives of applicable statutes, including:*

- *A statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule; and*
- *Why each one of the other considered significant alternatives, that affect the impact on small entities, was rejected.*

GSA determined it is necessary to obtain and analyze transactional data for purchases made through its contract vehicles in order to support the Government's category management vision and improve acquisition outcomes in general. For the Schedules, GSA is instituting this program to meet its obligations under 41 U.S.C. 152(3)(b), which states that orders and contracts awarded under the FSS program must result in "the lowest overall cost alternative to meet the needs of the Federal Government."

Following the April 17, 2015 public meeting and subsequent receipt of the public comments, GSA was compelled to further evaluate the spectrum of alternatives for Transactional Data Reporting, ranging from withdrawing the rule in favor of different approaches for obtaining the data to applying the new reporting clauses without corresponding changes to existing disclosure requirements. Ultimately, the decision to proceed hinged on considerations including, but not limited to, alternatives for collecting transactional data; the burden associated with reporting transactional data; opportunities to reduce burden through changes to existing disclosure requirements, and the associated impacts of those changes; effects on small businesses; and the benefits of collecting transactional data for non-standard products and services.

GSA's Initial Regulatory Flexibility Analysis included an evaluation of alternatives for obtaining transactional data—internal applications; GSA ordering platforms such as eBuy and GSA Advantage!®; the SmartPay credit card purchase program; and upgrades to the Federal Procurement Data System. GSA previously concluded these options would not provide the breadth of data needed to support the Government's objectives or would be unable to do so in the foreseeable future. Since the publication of the proposed rule, GSA reevaluated those alternatives and reached similar conclusions. Additionally, the Government's electronic invoicing initiative<sup>197</sup> was assessed as a potential alternative. However, following meetings regarding electronic invoicing

implementation with representatives from the Department of Defense, Department of Energy, Department of Transportation, Department of Treasury, and Department of Veterans Affairs, it was determined these electronic invoicing platforms will not provide a Government-wide transactional data reporting solution in the near term. Consequently, GSA continued to evaluate solutions that relied on vendor-provided transactional data.

The most common concern, in terms of the number of respondents, regarded the associated burden of reporting transactional data. In general, commenters felt the burden was underestimated and/or the requirement was too burdensome. To address the concerns with its Transactional Data Reporting burden estimates, GSA reevaluated its methodology and substantially increased its burden estimates. These higher burden projections were a significant concern and they reinforced the need to couple Transactional Data Reporting with other significant forms of burden reductions.

A notable concern expressed by industry stakeholders was the retention, and potential increase, of CSP disclosures. GSA noted in the proposed rule it ". . . would maintain the right throughout the life of the FSS contract to ask a vendor for updates to the disclosures made on its commercial sales format (which is used to negotiate pricing on FSS vehicles) if and as necessary to ensure that prices remain fair and reasonable in light of changing market conditions."<sup>198</sup> In response, industry stakeholders indicated retaining CSP disclosures would undercut any burden reduction achieved by eliminating the PRC tracking customer requirement. Specifically, respondents were concerned CSP disclosures will still force them to monitor their commercial prices, which ultimately causes the associated burden for both disclosure requirements.

In 2015, GSA also began preparing its request to renew the PRC information collection request (ICR) in accordance with the Paperwork Reduction Act of 1995.<sup>199</sup> While GSA would have proceeded with a renewal request regardless of this case, the timing did allow for the consideration of the Transactional Data Reporting comments. GSA agreed with the general comment that burdens of the PRC and CSP are related; as a result, it included CSP disclosure burden estimates in the ICR and renamed it "Federal Supply Schedule Pricing Disclosures" to more accurately reflect the scope of the information collected.

Following two **Federal Register** notices requesting comments on the FSS Pricing Disclosures ICR,<sup>200</sup> GSA increased its annual burden estimates for GSA FSS vendors, including those who would participate in the Transactional Data Reporting pilot, from \$59

<sup>197</sup> See Office of Management and Budget memorandum M-15-19, "Improving Government Efficiency and Saving Taxpayer Dollars Through Electronic Invoicing", July 17, 2015, available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-19.pdf>.

<sup>198</sup> See GSAR Case 2013-G504; Docket 2014-0020; Sequence 1 (80 FR 25994 (May 6, 2015)).

<sup>199</sup> Public Law 104-13, 109 Stat. 163.

<sup>200</sup> See 80 FR 72060 (Nov. 18, 2015) and 81 FR 21346 (Apr. 11, 2016).

million<sup>201</sup> to \$102 million.<sup>202</sup> Yet, Transactional Data Reporting alleviates the need for these FSS pricing disclosures when combined with automated commercial data sources, new data analytic tools, and improved price analysis policy. As a result, GSA decided to pair Transactional Data Reporting with the removal of CSP disclosures and the PRC tracking customer provision, resulting in an average annual burden reduction of approximately \$32 million for participating FSS vendors.<sup>203</sup> Furthermore, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government's burden by about \$3 million a year.<sup>204</sup>

Streamlining the existing pricing disclosure requirements is particularly beneficial for small businesses. The current CSP and PRC disclosure requirements are constant, meaning vendors, especially those with a higher number of FSS contract offerings, must bear the burden even if they have little to no sales through their FSS contracts. Thus, small businesses are disproportionately impacted because they account for the bulk of lower volume contracts. Moreover, small businesses, which generally have fewer resources to devote to contract management, will no longer be subjected to the complex CSP and PRC pricing disclosure requirements.

The Regulatory Secretariat has submitted a copy of the Final Regulatory Flexibility Analysis (FRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat.

**VIII. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies to this final rule because it contains information collection requirements. Accordingly, the Regulatory Secretariat submitted a

request for approval of a new information collection requirement concerning this rule to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

GSA has increased its burden estimates for the final rule. For the proposed rule, GSA chose to estimate the burden for the entire population of contracts that may ultimately be affected by this rule. However, as this rule will only initially apply to select Schedules and SINs under the FSS program on a pilot basis, GSA is now estimating the burden impact for vendors participating in the FSS pilot and those holding other GSA Governmentwide contracts that may include the Transactional Data Reporting clause (552.216–75). Although the burden estimates have increased, the final rule will still provide a net burden reduction based on the difference between the CSP and PRC disclosure requirements and the new reporting requirements (*i.e.*, clauses 552.238–74 Alternate I and 552.216–75). An analysis of these burden estimates, as well as the underlying assumptions, is presented below.

*A. New Reporting Requirements*

The new reporting clauses require vendors to report transactional data elements such as item descriptions and prices paid to a GSA Web site. This data must be reported monthly within 30 calendar days after the of each calendar month, meaning vendors will furnish 12 reports over the course of a year for each contract containing one of these clauses.

*Categorization of Vendors by Monthly Sales Revenue:* Transactional Data Reporting imposes a progressive

burden—one that increases with a vendor's sales volume. Monthly reporting times will increase with a vendor's applicable sales volume, as vendors with lower to no reportable sales will spend little time on monthly reporting, while those with more reportable sales will face a higher reporting burden.

The reporting clauses created by this rule will initially apply to a subset of the FSS program on a pilot basis and will be available for use for all of GSA's non-FSS Governmentwide IDIQ contracts. The pilot population may include up to 4,978 FSS vendors and 537 non-FSS vendors, for a total of 5,515 vendors. However, this number may be lower depending on the number of FSS vendors that accept the bilateral modification to include GSAR clause 552.238–74 Alternate I, or whether existing non-FSS Governmentwide contracting programs opt not to use GSAR clause 552.216–75.

GSA separated vendors into categories based on average monthly sales volume<sup>205</sup> in order to account for the differences in reporting burden. These categories are:

- Category 1: No sales activity (average monthly sales of \$0).
- Category 2: Average monthly sales between \$0 and \$20,000.
- Category 3: Average monthly sales between \$20,000 and \$200,000.
- Category 4: Average monthly sales between \$200,000 and \$1 million.
- Category 5: Average monthly sales over \$1 million.

The distribution by sales category of vendors initially impacted by this rule (*i.e.*, the pilot) is as follows:

FSS AND NON-FSS VENDORS BY SALES CATEGORY

	FSS vendors (count)	FSS vendors (percentage)	Non-FSS vendors (count)	Non-FSS vendors (percentage)	Total vendor count by category
Category 1 .....	1,343	26.98	31	5.77	1,374
Category 2 .....	1,800	36.19	42	7.82	1,842
Category 3 .....	1,219	24.49	196	36.50	1,415
Category 4 .....	426	8.56	173	32.22	599
Category 5 .....	190	3.82	95	17.69	285

<sup>201</sup> The 2012 information collection did not provide a cost burden estimate, but if the same hourly rate (\$68) was applied to the 2012 time burden, the 2012 cost burden would have been \$59,086,560.

<sup>202</sup> The annual public reporting burden for the CSP and PRC, excluding FSS vendors participating in the Transactional Data Reporting pilot, is \$57.66 million. If FSS pilot vendors were still subject to the CSP and PRC reporting requirements, the total annual public reporting burden would be \$101.69 million. The FSS pilot vendors' share of the total CSP and PRC reporting burden is based upon their share of the GSA FSS fiscal year 2015 sales volume, 43.2 percent. The annual \$44.03 million reporting

burden reduction attributed to this rule is 43.2 percent of the \$101.69 million annual reporting burden if it were applied to the entire GSA FSS program. More information about Information Collection 3090–0235 can be found at <http://www.reginfo.gov/public> by searching "ICR" for "3090–0235".

<sup>203</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those

participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>204</sup> \$3 million is the result of the Government's annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).

<sup>205</sup> Average monthly sales volume was computed by taking a vendor's total annual sales volume and dividing it by 12. All FSS and non-FSS sales figures are based on FY2015 sales data.

FSS AND NON-FSS VENDORS BY SALES CATEGORY—Continued

	FSS vendors (count)	FSS vendors (percentage)	Non-FSS vendors (count)	Non-FSS vendors (percentage)	Total vendor count by category
Total .....	4,978	100.00	537	100.00	5,515

**Automated vs. Manual Reporting Systems:** Vendors subject to these clauses must create systems or processes to produce and report accurate data. Generally, vendors will use automated or manual systems to identify the transactional data to be reported each month. An automated system is one that relies on information technology, such as an accounting system or data management software, to identify and compile reportable data. These systems can tremendously streamline the reporting process but require upfront configuration to perform the tasks, such as coding the data elements to be retrieved. Conversely, a manual system is one that incorporates little to no automation and instead relies on personnel to manually identify and compile the reportable data. An

example of a manual system would be an accountant reviewing invoices to identify the reportable data and then transferring the findings to a spreadsheet. In contrast to automation, a manual system requires relatively little setup time but the reporting effort will generally increase with the vendor's sales volume.

The likelihood of a vendor adopting an automated system increases with their applicable sales volume. Vendors with little to no reportable data are unlikely to expend the effort needed to establish an automated reporting system since it will be relatively easy to identify and report a limited amount of data. In fiscal year 2015, 32 percent of FSS vendors reported \$0 sales, while another 34 percent reported average sales between \$1 and \$20,000 per

month. If the rule were applied to the entire Schedules program, approximately two-thirds, or nearly 11,000 vendors, would have a lower reporting burden. However, as a vendor's applicable average monthly sales increase, they will be increasingly likely to establish an automated system to reduce the monthly reporting burden. Consequently, vendors with higher reportable sales will likely bear a higher setup burden to create an automated system, or absorb a high monthly reporting burden if they choose to rely on manual reporting methods.

The following chart depicts the likelihood of the pilot population of vendors initially impacted by this rule adopting manual and automated reporting systems:

VENDORS BY REPORTING SYSTEM TYPE  
[Manual vs. automated]

	Manual system (percentage)	Automated system (percentage)	Manual system— vendor count	Automated system— vendor count
Category 1 .....	100	0	1,374	0
Category 2 .....	100	0	1,842	0
Category 3 .....	90	10	1,274	142
Category 4 .....	50	50	299	300
Category 5 .....	10	90	29	257
Total Count of Vendors by System Type .....			4,818	698
Percentage of Vendors by System Type .....			87.35	12.65

**Initial Setup:** Vendors complying with this rule will absorb a one-time setup burden to establish reporting systems. The estimated setup time varies between automated and manual reporting systems. Vendors implementing a manual system must acclimate themselves with the new reporting requirements and train their staff accordingly, while those with automated systems must perform these tasks in addition to configuring information technology resources. GSA is attributing the setup burden by vendor, not by contracts, because a vendor holding multiple contracts subject to this rule will likely use a single reporting system. GSA estimates the average one-time setup burden is 8 hours for vendors with a manual system and 240 hours for those with an automated system.

**Monthly Reporting:** After initial setup, vendors subject to these reporting clauses are required to report transactional data within 30 calendar days after the end of each calendar month. The average reporting times vary by system type (manual or automated) and by sales category. GSA estimates vendors using a manual system will have average monthly reporting times ranging from 15 minutes (0.25 hours) per month for vendors with \$0 sales, to an average of 48 hours per month for vendors with monthly sales over \$1 million. On the other hand, GSA projects vendors with automated systems will have reporting times of 2 hours per month, irrespective of monthly sales volume, as a result of efficiencies achieved through automated processes.

The following table shows GSA's projected monthly reporting times per sales category and system type:

MONTHLY REPORTING HOURS BY SYSTEM TYPE AND CATEGORY

	Manual systems	Automated systems
Category 1 .....	0.25	2.00
Category 2 .....	2.00	2.00
Category 3 .....	4.00	2.00
Category 4 .....	16.00	2.00
Category 5 .....	48.00	2.00

B. Annualized Public Burden Estimates

The time and cost estimates for vendors initially impacted by the rule (i.e., the pilot) include one-time setup and monthly reporting burdens to comply with both reporting clauses.

Cost estimates were calculated by multiplying the estimated burden hours by an hourly rate of \$68 (\$50/hour with a 36 percent overhead rate<sup>206</sup>).

However, other aspects of the calculation methodology vary between FSS and non-FSS vendors:

- FSS estimates are made on a 20-year contract life cycle because the maximum length of an FSS contract is 20 years. The estimates include a one-time setup burden for all 4,978 FSS pilot vendors in Year 1. For each year thereafter, the estimates include the one-time setup burden for new FSS vendors under the pilot Schedules and SInS<sup>207</sup> and the monthly reporting burden for all impacted FSS vendors. The total Year 1 hours and costs were added to the aggregate hours and costs from Years 2 through 20 to arrive at the total life cycle figures, and then those figures were divided by 20 to arrive at the average annual figures:

*FSS Burden.*

*Year 1 Time Burden:* 321,064 hours.

*Year 1 Cost:* \$21,832,365.60.

*Years 2 through 20 Average Annual Time Burden:* 175,239 hours.

*Years 2 through 20 Average Annual Cost Burden:* \$11,916,272.42.

*Total Average Annual Time Burden:* 182,531 hours.

*Total Average Annual Cost Burden:* \$12,412,077.08.

- Non-FSS estimates are made on a 10-year contract life cycle because the maximum length of a non-FSS contract is 10 years. The estimates include a one-time setup burden for all 537 non-FSS vendors in Year 1. For each year thereafter, the estimates only include the monthly reporting burden because contracts are typically not added to a non-FSS program following the initial awards. The total Year 1 hours and costs were added to the aggregate hours and costs from Years 2 through 10 to arrive at the total life cycle figures, and then those figures were divided by 10 to arrive at the average annual figures.

*Non-FSS Burden.*

*Year 1 Time Burden:* 84,994 hours.

*Year 1 Cost Burden:* \$5,779,578.40.

*Years 2 through 10 Average Annual Time Burden:* 36,247 hours.

<sup>206</sup> The 36 percent overhead rate was used in reference to Office of Management and Budget (OMB) Circular No. A-76. Circular A-76 requires agencies to use standard cost factors to estimate certain costs of Government performance. These cost factors ensure that specific government costs are calculated in a standard and consistent manner to reasonably reflect the cost of performing commercial activities with government personnel. The standard cost factor for fringe benefits is 36.25 percent; GSA opted to round to the nearest whole number for the basis of its burden estimates.

<sup>207</sup> 1,434 vendors were awarded a total of 1,493 FSS contracts in FY2015. The 1,434 figure was used to project the number of new vendors each year from Years 2 through 20.

*Years 2 through 10 Average Annual Cost Burden:* \$2,464,768.80.

*Total Average Annual Time Burden:* 41,121 hours.

*Total Average Annual Cost Burden:* \$2,796,249.76.

Based on this methodology, the average annual time burden for vendors initially complying with this rule is 205,900 hours:

*Average Annual Time Burden.*

*FSS Pilot Vendors (Clause 552.238-74 Alternate I):* 182,531 hours.

*Non-FSS Vendors (Clause 552.216-75):* 41,121 hours.

*Total Average Annual Time Burden:* 223,652 hours.

The average annual cost burden for vendors initially complying with this rule is \$15,208,326.84:

*Average Annual Cost Burden.*

*FSS Pilot Vendors (Clause 552.238-74 Alternate I):* \$12,412,077.08.

*Non-FSS Vendors (Clause 552.216-75):* \$2,796,249.76.

*Total Average Annual Time Burden:* \$15,208,326.84.

#### C. Annualized Federal Government Burden Estimates

The Government also incurs costs through this rule when collecting data and performing quality assurance functions. Cost estimates use an hourly rate of \$41.48, which is derived from a GS-12, Step 5 salary in the Washington, DC locality area.<sup>208</sup> The burden includes costs specific to FSS contracts, non-FSS contracts, and information technology systems:

- *FSS Contracts:* Industrial Operations Analysts (IOAs) conduct compliance reviews that include analyzing the completeness and accuracy of reported data. IOAs are also responsible for reviewing reported data and data corrections, as necessary. IOAs reported spending 62,769 hours on compliance reviews in fiscal year 2014. GSA personnel spent approximately 1 hour reviewing 2,851 sales adjustments over that same time period, a task that has since been transferred to IOAs. Therefore, the total time estimate for FSS contracts is 65,620 hours per year, for an estimated annual cost of \$2,721,927.97.

- *Non-FSS Contracts:* GSA personnel estimated it currently takes them an average of 2.5 hours per contract per month to process transactional data. Multiplied by the number of applicable non-FSS contracts in fiscal year 2015 (537), this equates to 16,110 hours, or an estimated annual cost of \$668,242.80.

<sup>208</sup> Office of Personnel Management Salary Table 2015-DCB Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA, effective January 2015.

- *Information Technology Systems:* The system needed to collect and process transactional data will cost GSA an average of \$491,500.00, spread across a 20-year contract life cycle.

Combining the costs for FSS contracts, non-FSS contracts, and information technology systems, the total annualized cost to the Government for the reporting clauses would be \$3,881,670.77 if the rule were implemented across the FSS program.<sup>209</sup> However, since the rule is being implemented for the FSS program on a pilot basis for select Schedules and SInS, the initial implementation costs only include a share of the full FSS implementation burden. As the pilot contracts represented 43.2 percent of the total fiscal year 2015 FSS sales, GSA is allocating the same share for the FSS burden relating to IOAs, which amounts to \$1,175,872.88. As a result, the initial Government burden is \$2,335,615.68.

#### D. Differences From the Previous Burden Estimates

Nineteen commenters provided comments related to the compliance burden.<sup>210</sup> Several questioned GSA's burden projections, stating the compliance estimates were understated and the projected burden reduction was overstated. Multiple commenters stated the Government is shifting the burden of gathering transactional data onto vendors, with some suggesting the burden will lead to higher prices or that vendors should be reimbursed for costs incurred.

The proposed rule contained burden estimates in accordance with the Paperwork Reduction Act, including a one-time average initial setup burden of 6 hours and an average monthly reporting burden of approximately .52 of an hour, or 31 minutes. The ongoing reporting burden for FSS vendors, following a first-year burden for implementation, was estimated to \$7.6 million a year. However, the proposed rule coupled the new reporting requirements with the removal of the PRC tracking customer provision, which was projected to provide an estimated burden reduction of approximately \$51 million a year if the rule were applied

<sup>209</sup> Excluding costs for FSS contracts administered by the Department of Veterans Affairs.

<sup>210</sup> See e.g., ABA Letter, Abt Associates Letter, Allen Letter, ARA Letter, CGP Letter, CODSIA Letter, EA Letter, Experian Letter, GSA OIG Letter, immixGroup Letter, IOPFDA Letter, Insite.r.com Letter, Johnson & Johnson Letter, NDIA Letter, POGO Letter, RTI Letter, SBA Letter, Shepra Letter, SIA Letter.

to the entire GSA Schedules program,<sup>211</sup> based upon PRC burden estimates from the 2012 approval of the information collection tracked under OMB Control Number 3090–0235.

Coincidentally, GSA began preparing its request to renew Information Collection 3090–0235 in the summer of 2015, as it was due to be renewed three years after its 2012 approval. While GSA would have proceeded with a renewal request regardless, the timing did allow for consideration of the Transactional Data Reporting comments. In particular, GSA agreed with the general industry comment that the burdens of the PRC and CSP are related, and GSA therefore decided to include CSP disclosure burden estimates in its information collection request. Following two **Federal Register** notices requesting comments on the FSS Pricing Disclosures ICR,<sup>212</sup> GSA increased its annual burden estimates for GSA FSS vendors, including those who would participate in the Transactional Data Reporting pilot, from \$59 million<sup>213</sup> to \$102 million.<sup>214</sup>

To address the concerns with the Transactional Data Reporting proposed rule burden estimates, GSA reevaluated its methodology and substantially increased its burden estimates. For the proposed rule, GSA's public burden estimates included an average initial setup time of 6 hours and average ongoing monthly reporting times ranging from 2 minutes to 4 hours, depending on a vendor's sales volume.<sup>215</sup> In contrast, the final rule burden estimates include initial average

setup times of 8 hours for vendors using manual systems and 240 hours for vendors using automated systems, and average ongoing monthly reporting times ranging from 15 minutes to 48 hours, depending on a vendor's sales volume and reporting system type.

These higher burden projections, coupled with the increased Transactional Data Reporting burden estimates calculated in response to the public comments, were a significant concern and reinforced the need to pair Transactional Data Reporting with other significant forms of burden reductions. Consequently, the FSS Transactional Data Reporting clause (552.238–74 Alternate I) is now coupled with the removal of the CSP and PRC burdens shown in Information Collection 3090–0235, resulting in an overall annual public burden reduction of approximately \$32 million for the initial implementation of the rule.<sup>216</sup> Furthermore, implementing the FSS pilot without the existing CSP and PRC requirements lowers the Government's burden by about \$3 million a year.<sup>217</sup>

#### *E. Information Collection Supporting Statement*

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20407. Please cite OMB Control Number 3090–0306, Transactional Data Reporting, in all correspondence.

#### **Exhibit A: List of Comment Letters Received**

**Note:** The following Exhibit A will not appear in the Code of Federal Regulations.

*ABA:* Letter from Stuart B. Nibley, Chair, American Bar Association, Section of Public Contract Law, May 11, 2015.

*Abt Associates:* Letter from Marcia King, Associate Director, Contracts, Abt Associates, May 1, 2015.

*Allen:* Letter from Larry Allen, President, Allen Federal Business Partners, May 4, 2015.

*ARA:* Letter from John McClelland, Vice President, Government Affairs & Chief

Economist, American Rental Association, May 4, 2015.

*Atkins:* Letter from Carol Hardaker, Atkins North America, Inc., March 11, 2015.

*CODSIA:* Letter from Bettie McCarthy, Administrative Officer, Council of Defense and Space Industry Associations, on behalf of: R. Bruce Josten, Executive Vice President, Government Affairs, Chamber of Commerce of the U.S.; A.R. "Trey" Hodgkins, III, Senior Vice President for the Public Sector, Information Technology Alliance for the Public Sector; Will Goodman, Vice President for Policy, National Defense Industrial Association; Alan Chvotkin, Executive Vice President & Counsel, Professional Services Counsel; May 4, 2015.

*CGP:* Letter from Roger Waldron, President, The Coalition for Government Procurement, May 4, 2015.

*deMers:* Letter from Brad deMers, March 4, 2015.

*EA:* Letter from Frank J. Aquino, Vice President and General Counsel, EA Engineering, Science, and Technology, Inc., PBC, May 4, 2015.

*Experian:* Letter from Heather Richey, Experian, May 11, 2015.

*Falcone:* Letter from Ronald Falcone, May 4, 2015.

*GSA OIG:* Letter from Theodore R. Stehney, Assistant Inspector General for Auditing, GSA Office of Inspector General, Office of Audits, May 4, 2015.

*immixGroup:* Letter from Jeffrey Ellinport, Senior Director & Deputy General Counsel, immixGroup, May 1, 2015.

*Insite.rr.com:* Letter from Randall Sweeney, Insite.rr.com, April 22, 2015.

*IOPFDA:* Letter from Paul Miller, Independent Office Products and Furniture Dealers Association, March 30, 2015.

*Johnson & Johnson:* Letter from Colleen Menges, Director, Government Contracts, Johnson & Johnson Health Care Systems Inc., May 4, 2015.

*Lynch:* Letter from Rod Lynch, March 4, 2015.

*Macdonald:* Letter from J. Ruairi Macdonald, L.L.M. Government Procurement Law Candidate, George Washington University Law School, May 4, 2015.

*NDIA:* Letter from Will Goodman, Vice President for Policy, National Defense Industrial Association, April 28, 2015.

*NMFTA:* Letter from Paul D. Cullen, Jr. and John R. Bagileo, National Motor Freight Traffic Association, Inc., May 11, 2015.

*Perry:* Letter from Glenn Perry, Multiple Award Schedule Advisory Panel Member and former senior procurement official, April 17, 2015.

*POGO:* Letter from Scott H. Amey, General Counsel, Project on Government Oversight, May 4, 2015.

*RTI:* Letter from Don Enichen, Research Triangle Institute, May 11, 2015.

*SBA:* Letter from Claudia R. Rogers, Acting Chief Counsel for Advocacy, and Major L. Clark III, Assistant Chief Counsel for Advocacy, U.S. Small Business Administration, Office of Advocacy, May 4, 2015.

*Shepra:* Letter from Stephen Roadfeldt, Shepra, Inc., April 9, 2015.

<sup>211</sup> The \$51 million burden reduction was the ongoing FSS reporting burden (\$7.6 million) minus the PRC burden of \$58.5 million from the 2012 PRC information collection (OMB Control Number 3090–0235). The \$7.6 million FSS reporting burden did not include the burden for one-time implementation. The \$51 million burden reduction applied to the entire GSA Schedules program and was not adjusted to only account for vendors participating in the FSS pilot.

<sup>212</sup> See 80 FR 72060 (Nov. 18, 2015) and 81 FR 21346 (Apr. 11, 2016).

<sup>213</sup> The 2012 information collection did not provide a cost burden estimate, but if the same hourly rate (\$68) was applied to the 2012 time burden, the 2012 cost burden would have been \$59,086,560.

<sup>214</sup> The annual public reporting burden for the CSP and PRC, excluding FSS vendors participating in the Transactional Data Reporting pilot, is \$57.66 million. If FSS pilot vendors were still subject to the CSP and PRC reporting requirements, the total annual public reporting burden would be \$101.69 million. The FSS pilot vendors' share of the total CSP and PRC reporting burden is based upon their share of the GSA FSS fiscal year 2015 sales volume, 43.2 percent. The annual \$44.03 million reporting burden reduction attributed to this rule is 43.2 percent of the \$101.69 million annual reporting burden if it were applied to the entire GSA FSS program. More information about Information Collection 3090–0235 can be found at <http://www.reginfo.gov/public> by searching "ICR" for "3090–0235".

<sup>215</sup> See GSAR Case 2013–G504; Docket 2014–0020; Sequence 1 (80 FR 11619 (Mar. 4, 2015)).

<sup>216</sup> \$32 million does not include costs for non-FSS contracts. It is the result of the FSS burden of the initial pilot implementation (\$12.41 million), minus the share of the combined CSP and PRC burden allocated to the FSS pilot vendors (\$44.03 million). The total CSP and PRC burden from Information Collection 3090–0235, if it were applied to all GSA FSS vendors, including those participating in the Transactional Data Reporting pilot, would be \$101.69 million. The share of that burden allocated to the FSS pilot vendors (\$44.03 million) is based on the percentage of the overall FY15 FSS sales accounted for by the FSS pilot vendors (43.2 percent).

<sup>217</sup> \$3 million is the result of the Government's annual burden for this rule (\$2.34 million) minus the share of the combined CSP and PRC burden for the Government allocated to the FSS pilot contracts (\$5.58 million).



SIA: Letter from Don Erickson, CEO, Security Industry Association, May 4, 2015.

List of Subjects in 48 CFR Parts 501, 515, 516, 538, and 552

Government procurement.

Dated: June 16, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

For the reasons described in the preamble, GSA amends 48 CFR parts 501, 515, 516, 538, and 552 as follows:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

- 1. The authority citation for 48 CFR part 501 continues to read as follows:

Authority: 40 U.S.C. 121(c).

501.106 [Amended]

- 2. Amend section 501.106 in the table, by—

- a. Adding in numerical sequence, GSAR Reference “515.408” and its corresponding OMB Control Number “3090-0235”;
b. Adding in numerical sequence, GSAR Reference “552.216-75” and its corresponding OMB Control Number “3090-0306”;
c. Removing GSAR Reference “552.238-74” and its corresponding OMB Control Numbers “3090-0121” and “3090-0250”; and
d. Adding in numerical sequence, GSAR Reference “552.238-74” and its corresponding OMB Control Numbers “3090-0121” and “3090-0306”.

PART 515—CONTRACT BY NEGOTIATION

- 3. The authority citation for 48 CFR part 515 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

- 4. Amend section 515.408 by—
a. Revising the introductory text of paragraph (a), and paragraph (a)(2);
b. Revising the introductory text of paragraphs (b) and (c);
c. Revising paragraph (d); and
d. Revising the introductory text of paragraph (e) and paragraph (e)(1).

The revisions read as follows:

515.408 Solicitation provisions and contract clauses.

\* \* \* \* \*

(a) Use Alternate IV of the FAR provision at 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, for MAS solicitations to provide the format for submission of information other than

cost or pricing data for MAS solicitations. To provide uniformity in requests under the MAS program, insert the following in paragraph (b) of the provision:

\* \* \* \* \*

(2) Commercial sales practices. When the solicitation contains the basic clause 552.238-74 Industrial Funding Fee and Sales Reporting, the Offeror must submit information in the format provided in this solicitation in accordance with the instructions at Figure 515.4-2 of the GSA Acquisition Regulation (48 CFR 515.4-2), or submit information in the Offeror’s own format.

\* \* \* \* \*

(b) When the contract contains the basic clause 552.238-74 Industrial Funding Fee and Sales Reporting, insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation and resulting contract (see FAR 12.303).

\* \* \* \* \*

(c) When the contract contains the basic clause 552.238-74 Industrial Funding Fee and Sales Reporting, include the instructions for completing the commercial sales practices format in Figure 515.4-2 in solicitations issued under the MAS program.

\* \* \* \* \*

(d) When the contract contains the basic clause 552.238-74 Industrial Funding Fee and Sales Reporting, insert the clause at 552.215-72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts under the MAS program.

\* \* \* \* \*

(e) Use Alternate IV of FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost or pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, insert the following in paragraph (b) of the clause:

(1) Information required by the clause at 552.238-81, Modifications (Multiple Award Schedule).

\* \* \* \* \*

PART 516—TYPES OF CONTRACTS

- 5. The authority citation for 48 CFR part 516 continues to read as follows:

Authority: 40 U.S.C. 121(c).

- 6. Amend section 516.506 by adding paragraph (d) to read as follows:

516.506 Solicitation provisions and contract clauses.

\* \* \* \* \*

(d) The Contracting Officer may insert clause 552.216-75 in solicitations and

GSA-awarded IDIQ contracts, not including Federal Supply Schedule (FSS) contracts. This clause should be included in all GSA-awarded Governmentwide acquisition contracts and multi-agency contracts. See 538.273 for clauses applicable to FSS contracts.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

- 7. The authority citation for 48 CFR part 538 continues to read as follows:

Authority: 40 U.S.C. 121(c).

- 8. Revise section 538.270 to read as follows:

538.270 Evaluation of multiple award schedule (MAS) offers.

- 9. Add section 538.270-1 to read as follows:

538.270-1 Evaluation of offers without access to transactional data.

(a) Applicability. Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is included in the solicitation (see 515.408).

(b) When offerors have commercial catalogs, negotiate concessions from established catalogs, including price and non-price terms and conditions.

(c) The Government will seek to obtain the offeror’s best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(d) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(e) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror’s commercial customers. When determining the Government’s price negotiation objectives, consider the following factors:

(1) Aggregate volume of anticipated purchases.

(2) The purchase of a minimum quantity or a pattern of historic purchases.

(3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers.

(4) Length of the contract period.

(5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices.

(6) Ordering and delivery practices.

(7) Any other relevant information, including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an offeror may incur more expense selling to the Government than to the customer who receives the offeror's best price, or the customer (e.g., dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform. In such cases, some reduction in the discount given to the Government may be appropriate. If the best price is not offered to the Government, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(f) You may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist:

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated.

(2) Award is otherwise in the best interest of the Government.

(g) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) upon which the award is based.

■ 10. Amend section 538.271 by revising paragraph (a) and removing paragraph (c).

The revision reads as follows:

**538.271 MAS contract awards.**

(a) MAS awards will be for commercial items as defined in FAR 2.101.

\* \* \* \* \*

■ 11. Revise section 538.272 to read as follows:

**538.272 MAS price reductions.**

(a) *Applicability.* This section applies when the contract contains the basic clause 552.238–74 Industrial Funding Fee and Sales Reporting.

(b) The basic clause and Alternate I of 552.238–75, Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the eligible ordering activities and the

offeror's customer or category of customers on which the contract award was predicated (see 538.271(c)). If a change occurs in the contractor's commercial pricing or discount arrangement applicable to the identified commercial customer (or category of customers) that results in a less advantageous relationship between the eligible ordering activities and this customer or category of customers, the change constitutes a "price reduction."

(c) Ensure that the contractor understands the requirements of section 552.238–75 and agrees to report all price reductions to the Contracting Officer as provided for in the clause.

■ 12. Amend section 538.273 by revising paragraph (b) to read as follows:

**538.273 Contract clauses.**

\* \* \* \* \*

(b) *Multiple and single award schedules.* Insert the following in solicitations and contracts:

(1) *552.238–74, Industrial Funding Fee and Sales Reporting.* Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. Clause 552.238–75 Alternate II should also be used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(2) *552.238–75, Price Reductions.* (i) Except in cases where Alternate II is used, use Alternate I in solicitations and contracts for—

(A) Federal Supply Schedule 70;  
(B) The Consolidated Schedule containing information technology Special Item Numbers;  
(C) Federal Supply Schedule 84; and  
(D) Federal Supply Schedules for recovery purchasing (see 538.7102).

(ii) Use Alternate II for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(3) *552.238–81, Modifications (Federal Supply Schedule).* (i) Use Alternate I for Federal Supply Schedules that only accept electronic modifications.

(ii) Use Alternate II for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–74 Alternate I in the contract.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 13. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 14. Amend section 552.212–71 by revising the date of the clause and removing from paragraph (b) “\_552.243–72 Modifications (Multiple Award Schedule)” and adding, in numerical sequence, “\_552.238–81 Modifications (Multiple Award Schedule)”. The revision reads as follows:

**552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items JUN 2016)**

\* \* \* \* \*

■ 15. Add section 552.216–75 to read as follows:

**552.216–75 Transactional Data Reporting.**

As prescribed in 516.506(d), insert the following provision:

**Transactional Data Reporting (JUN 2016)**

(a) *Definition.* Transactional data encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) *Reporting of Transactional Data.* The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an Internet Web site designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center Web site, <https://vsc.gsa.gov>. The reporting system Web site address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.

(vii) Unit Measure (each, hour, case, lot).

(viii) Quantity of Item Sold.

- (ix) Universal Product Code.
- (x) Price Paid per Unit.
- (xi) Total Price.

Note to paragraph (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(c)(3).

(3) The Contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(6) *Reporting Points.* (i) The acceptable points at which transactional data may be reported include—

- (A) Issuance of an invoice; or
- (B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(7) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order issued against the contract.

(8) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other information that would compromise national security are exempt from this reporting requirement.

(9) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(10) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) *Contract Access Fee (CAF).* (1) GSA's operating costs are reimbursed through a CAF charged on orders placed against this contract. The CAF is paid by the ordering activity but remitted to GSA by the Contractor. GSA has the unilateral right to change the fee structure at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change.

(2) Within 60 calendar days of award or inclusion of this clause in the

contract, a GSA representative will provide the Contractor with specific written procedural instructions on remitting the CAF, including the deadline by which the Contractor must remit the CAF. The deadline specified in the written procedural instructions will be no less than 30 calendar days after the last calendar day of the month. GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(3) The Contractor must remit the CAF to GSA in U.S. dollars.

(4) The Contractor's failure to remit the full amount of the CAF within the specified deadline constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232-17, Interest). If the Contractor fails to submit the required sales reports, falsifies them, or fails to timely pay the CAF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

(End of Provision)

■ 16. Amend section 552.238-74 by adding Alternate I to read as follows:

**552.238-74 Industrial Funding Fee and Sales Reporting.**

\* \* \* \* \*

*Alternate I ([Insert abbreviated month and year of publication in the **Federal Register**]):* As prescribed in 538.273(b)(1), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) *Definition.* *Transactional data* encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) *Reporting of Transactional Data.* The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an Internet Web site designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center Web site, <https://vsc.gsa.gov>. The reporting system Web site address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.

(vii) Unit Measure (each, hour, case, lot).

(viii) Quantity of Item Sold.

(ix) Universal Product Code.

(x) Price Paid per Unit.

(xi) Total Price.

Note to paragraph (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(c)(3).

(3) The contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The reported price paid per unit and total price must include the Industrial Funding Fee (IFF).

(6) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(7) *Reporting Points.* (i) The acceptable points at which transactional data may be reported include—

- (A) Issuance of an invoice; or
- (B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(8) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order of the contract.

(9) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other or information that would compromise national security are exempt from this reporting requirement.

(10) This clause does not exempt the Contractor from fulfilling existing

reporting requirements contained elsewhere in the contract.

(11) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) *Industrial Funding Fee (IFF)*. (1) This contract includes an IFF charged on orders placed against this contract. The IFF is paid by the authorized ordering activity but remitted to GSA by the Contractor. The IFF reimburses GSA for the costs of operating the Federal Supply Schedule program, as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized GSA programs, in accordance with 40 U.S.C. 321.

(2) GSA has the unilateral right to change the fee amount at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change. GSA will post notice of the current IFF on the Vendor Support Center Web site at <https://vsc.gsa.gov>.

(3) Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. The fee will not be included in the price of non-contract items purchased pursuant to a separate contracting authority, such as a Governmentwide Acquisition Contract (GWAC); a separately awarded Federal Acquisition Regulation (FAR) Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract.

(4) The Contractor must remit the IFF to GSA in U.S. dollars within 30 calendar days after the last calendar day of the reporting quarter; final payment must be remitted within 30 calendar days after physical completion of the last outstanding task order or delivery order issued against the contract.

(5) GSA reserves the unilateral right to change remittance instructions

following 60 calendar days' advance notification to the Contractor.

(d) The Contractor's failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232-17, Interest). If the Contractor fails to submit the required transactional data reports, falsifies them, or fails to timely pay the IFF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

■ 17. Amend section 552.238-75 by adding Alternate II to read as follows:

**552.238-75 Price Reductions.**

\* \* \* \* \*

*Alternate II* ([Insert abbreviated month and year of publication in the **Federal Register**.]). As prescribed in 538.273(b)(2)(ii), substitute the following paragraphs (a) and (b) for paragraphs (a), (b), (c), (d), (e), (f) and (g) of the basic clause:

(a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.

(b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

■ 18. Amend section 552.238-81 by—  
■ a. In Alternate I, revising the date of the alternate and the introductory text; and

■ b. Adding Alternate II.

The revisions and addition read as follows:

**552.238-81 Modification (Federal Supply Schedule).**

\* \* \* \* \*

*Alternate I* ([Insert abbreviated month and year of publication in the **Federal Register**.]). As prescribed in 538.273(b)(3)(i), add the following paragraph (f) to the basic clause:

\* \* \* \* \*

*Alternate II* ([Insert abbreviated month and year of publication in the **Federal Register**.]). As prescribed in 538.273(b)(3)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *Types of Modifications.*

(1) *Additional items/additional SINs.* When requesting additions, the Contractor must submit the following information:

(i) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the instructions in the solicitation.

(ii) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iii) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(iv) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(v) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

(2) *Deletions.* The Contractor must provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the Contracting Officer determines that the higher price is unreasonable compared to the price of the deleted item.

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