

GSA Publishes Transactional Data Reporting Rule Transforming Schedule Contracting Landscape

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Government Contracts

On June 23, 2016, GSA issued a long-awaited [final rule](#) that significantly alters the regulatory landscape for contractors who hold Federal Supply Schedule (FSS) contracts and other government-wide contracting vehicles. The new rule, which is known as the Transactional Data Reporting rule, is the most significant change to the FSS program in more than two decades because it (1) eliminates the disclosure requirements of the Price Reductions Clause (PRC) and Commercial Sales Practices (CSP), and (2) replaces them with a requirement to report 11 items of transactional data to GSA each month using a centralized online portal. These changes do not extend to schedule contracts with the Department of Veterans Affairs. Although this new model promises to give GSA contracting officers greater flexibility in evaluating offers and price reasonableness, there is still significant uncertainty as to how the rule will be applied in practice.

Monthly Transactional Data Reporting Requirement

The new rule requires that contractors report transactional data from orders placed against their FSS, Governmentwide Acquisition Contracts (GWACs), and government-wide IDIQ contracts. The new GSAR clause states that all transactional data under the contract must be reported on a monthly basis through an online portal. The monthly report must include all transactions under the relevant contract vehicles, including sales to non-federal entities purchasing through those vehicles. Specifically, the new rule will require contractors to report 11 items of transactional data to GSA, including a description of the deliverable, identifying manufacturing information, quantity sold, unit and total price, and other information as designated by the government.

Elimination of Commercial Sales Practices Disclosure and Price Reductions Requirements

Notably, this rule eliminates the dual requirements of CSP disclosure and the PRC. Current FSS contract holders are required to submit commercial sales practices disclosures that describe the nature of the contractor's non-government sales. Contractors are also required to provide price reductions under their schedule contracts to match price reductions in corresponding commercial sales. Once the new rule is fully implemented, both requirements will be replaced by the monthly data reporting requirement.¹

¹ The Price Reductions Clause in contracts will be amended to provide merely for voluntary price reductions. GSAR 552.238-75.

This change represents a transformational shift in focus for GSA, which previously relied upon the commercial sales practices disclosures and price reduction requirement to ensure that the government paid comparable prices to commercial customers. The new rule provides transactional data reporting only on sales through these contracting vehicles, meaning GSA will no longer have access to purely commercial sales information. The final rule emphasizes that this data will allow GSA to perform horizontal price comparisons between offerors and that “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.” The rule also emphasizes that GSA will provide “tailored training on the proper use of transactional data” to the relevant contracting officers and ordering activities. How effective these horizontal price comparisons will be for less commoditized deliverables, such as professional services, remains to be seen.

These horizontal price comparisons will be utilized as part of the evaluation process for award of new GSA contracts, and the final rule provides significantly greater flexibility for GSA contracting officers to evaluate offers based upon traditional competitive procurement principles under the FAR. However, the question of what precisely GSA contracting officers will request from offerors in future solicitations to demonstrate price reasonableness is unanswered by the new rule and accompanying guidance.

Changes to Industrial Funding Fee Requirements

In addition to the changes described above, the new rule requires that contractors remit payment of the industrial funding fee or contract access fee to GSA on a quarterly basis. These fees are paid by the ordering activity to the contractor but then conveyed to GSA from the contractor to reimburse GSA for the costs of operating the contracting vehicle.

Pilot Implementation Within 60 Days

The final rule calls for rapid implementation through a pilot program to begin within 60 days of publication of the rule on June 23, 2016. The pilot implementation covers eight Federal Supply Schedules, including the hugely important Information Technology Schedule 70 and the Professional Services Schedule 00CORP.

The new requirements will be implemented when a new contract is issued or an existing contract is renewed. Existing schedule holders will not be immediately impacted, but will be encouraged to adopt the requirements through bilateral modifications. The phase out of the existing requirements will depend upon the results of the pilot, but GSA estimates that the schedules covered by the pilot account for 40% of FSS sales, so the “pilot” is less a trial-balloon and more the first-step in a full-fledged implementation.² Notably, Department of Veterans Affairs schedule contracts are not impacted by this new rule and remain subject to the pre-existing regime.

² The new requirements will also be implemented in all new GWACs and government wide IDIQs. The impact on existing contracts is less clear. Existing contracts with other transactional data requirements may adopt these new requirements through a bilateral modification, but the rule “may be applied” to existing contracts without such reporting requirements currently.

Changes from Proposed Rule

The Transactional Data Reporting rule drew enormous attention from the government contracts industry when it was proposed on March 4, 2015. In responding to the numerous public comments, GSA made several adjustments to the final rule intended to reduce the burden on contractors while preserving the data reporting requirement.

The most significant change is the complete removal of the CSP requirement. GSA acknowledged public comments that adding the data reporting requirement on top of the sales practices disclosure requirement would be burdensome and hence removed the disclosure requirement.

Much of the criticism of the proposed rule was the GSA's optimistic projection that the burden on contractors for initial set-up would be 6 hours and the average monthly reporting burden would be 0.52 hours. GSA's final rule acknowledged the criticism of these projections and adjusted the projections upwards for initial set-up to 8 hours for manual systems and 240 hours for automated systems, and monthly reporting burden of 15 minutes to 48 hours depending on the type of system and volume of sales. GSA noted that the removal of the CSP requirement would reduce the burden on the contractors, and GSA also increased the monthly reporting deadline from 15 days to 30 days to further reduce the burden. While preparation of CSP and maintenance of basis of award tracking for price reduction purposes has been a significant burden on many contractors, it remains to be seen whether the new transactional data reporting will result in reduced or increased burden.

Open Questions

While GSA is touting the expected benefits of the new Transactional Data Rule, the rule itself leaves many important questions unanswered. Going forward, FSS and GWAC contractors should track how the following practical issues are being addressed during the implementation of the new rule:

- How will GSA assess transactional data? And how will such data be used? To what extent will transactional data be subject to the Freedom of Information Act?
- What kind of training will GSA contracting officers receive on how to use transactional data to conduct contract negotiations?
- Given that the new rule allows the Government to request additional data to assist them in contract negotiations, when, and under what circumstances, will GSA contracting officers request such data? Will these requests simply mirror the requirements of the old CSP and PRC to which GSA contracting officers have presumably grown accustomed?
- Will contractors be required to significantly change their billing and accounting systems to accommodate the new reporting requirements?
- How will GSA use this transactional data to evaluate pricing and conduct negotiations in connection with contracts for professional services or IT hardware and software?
- What role will GSA's Office of Inspector General play in contract negotiations and audits going forward?

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