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# The end of CSP and PRC requirements? GSA's TDR pilot program faces further internal criticism

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As GSA Multiple Award Schedule contractors know all too well, Schedule contracting involves a complex web of customer-tracking, reporting, and price-adjustment requirements. Those of us who navigate these often byzantine rules understand why many in the industry have called for the adoption of an alternative approach to verifying price reasonableness.

For the last several years, GSA has been piloting just such an alternative: the Transactional Data Reporting ("TDR") program, through which the government collects transaction-level data on products and services purchased through the Schedule to make data-driven decisions that save taxpayer dollars.

GSA has been running a TDR pilot program for several years to test the potential for a new regulatory regime, though the program sometimes has been the source of criticism[1] and[2] controversy.[3]

Now that controversy has heightened further: GSA's Office of Inspector General published an audit report on June 24, 2021[4] that is sharply critical of the program, only to see GSA's Federal Acquisition Service ("FAS") Commissioner publicly reject the report's conclusions and defend TDR's effectiveness.

Time will tell whether the TDR rule becomes the new standard for GSA Schedule contracting. But the latest round of controversy suggests that the current maze of requirements are not going away any time soon.

## Background

Currently, prospective GSA Schedule contractors must provide GSA with a Commercial Sales Practices[5] ("CSP") disclosure that details the contractor's discounting policies and practices. Once the contractor is awarded a contract, the contractor is then subject to the requirements of the Price Reductions Clause[6] ("PRC").

The PRC requires a contractor to continually maintain the same price-discount relationship that existed between the awarded GSA Schedule price and the "Basis of Award" customer's pricing at the time of the GSA Schedule award. This relationship is known as the "discount ratio" or "tracking customer ratio."[7]

The TDR rule[8] takes a different approach. Under the TDR rule, contractors would be required on a monthly basis to report various elements of transactional data (e.g., unit measure, quantity of item sold, universal product code, prices per unit, etc.).

This data would then be sorted and analyzed by expert "category managers," with the resulting conclusions allowing government buyers — at least in theory — to "easily evaluate the relative competitiveness of prices between FSS vendors."[9] Significantly, contractors would no longer be subject to the CSP and PRC requirements described above.

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In April 2021, GSA's Senior Procurement Executive, Office of Government-Wide Policy announced[10] that its TDR pilot has had "great success." The announcement summarized TDR's potential advantages over the use of CSP and PRC requirements: "When TDR is used, government prices are lower, the reporting burden on contractors is reduced, and small businesses generate stronger sales growth."

However, the TDR rule and pilot program have not proceeded without hiccups. The proposed rule faced criticism[11] from industry and government stakeholders alike. And following the 2016 issuance of the final rule, the Coalition for Government Procurement saw the need to raise 65 different questions seeking clarification.[12]

Then, two years into the pilot program, the GSA OIG publicly critiqued the program[13] in a 2018 report. Now, the GSA OIG has conducted yet another audit that raises yet more concerns about the functioning and effectiveness of the TDR regime.

## June 2021 audit report

According to the OIG's latest audit report, "GSA's TDR pilot is not meeting its intended purpose to improve value to the taxpayers." The OIG raised several reasons why — in its view — the pilot is falling short.

*First,* the OIG stated that the "TDR data is inaccurate and unreliable." The OIG asserted that GSA had not "maintain[ed] the integrity of the data" and pointed to a few examples of

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facially-inaccurate information found within the TDR data. The OIG stated that industrial operations analysts ("IOAs") are supposed to provide a check on the data, but the OIG contended that "the IOAs seem to be unaware that this is their responsibility." Accordingly, the OIG thought the data could not actually be useful to GSA customers.

*Second,* the OIG found that GSA customers were not actually using the data. According to the OIG, "contracting personnel lacked access to and an understanding of the TDR data." Moreover, the trainings about TDR has warned that the data may be unreliable, making it less likely that contracting personnel would rely on the data.

*Despite the OIG's recent recommendations, GSA's FAS Commissioner indicated it has no intention of exiting the TDR pilot.*

*Third,* the OIG noticed that GSA customers were still relying on other pricing tools to make their purchasing decisions. The OIG highlighted GSA *Advantage!*®, 4P, and Contract-Awarded Labor Category ("CALC") as tools which were more likely to be used by contracting personnel.

The OIG concluded:

> The TDR pilot has introduced additional risks associated with the potential use of inaccurate and unreliable TDR data and reliance on flawed pricing tools. Accordingly, GSA should take immediate action to mitigate these risks and develop and implement an exit strategy for the TDR pilot.

## Response to June 2021 audit report

Despite the OIG's recent recommendations, GSA's FAS Commissioner indicated it has no intention of exiting the TDR pilot.

In a response attached to the OIG's audit report, the FAS Commissioner explained that the OIG's findings were no longer up-to-date — and that "FAS has taken or intends to take the following actions to address [the OIG's] concerns":

- "Additional training and policy guidance on how to properly use the transactional data that is collected with the understanding that a goal of FAS is to integrate this data into its pricing tools."
- "During 2020, FAS put together a tiger team to update the data management plan related to TDR. These updates led to wider access of the data to Government acquisition professionals."
- "FAS has integrated multiple types of pricing tools that the acquisition workforce can use to assist with pricing determinations. The goal is to add TDR data to these tools to further understand pricing at a purchasing level."

The FAS Commissioner also defended the accuracy of TDR data, explaining that "FAS has integrated system-wide input validations to ensure data completeness and accuracy" and "will continue to build additional validations combined with proactive compliance reviews provided by the Industrial Operation Analysts (IOA) during contractor assessments."

The FAS Commissioner concluded its response by rejecting the OIG's recommendations. However, the OIG now has formally requested that the FAS Commissioner reconsider that conclusion.

## Conclusion

In light of this intra-agency dissension over the value and effectiveness of the TDR pilot, the future path and timeline for the TDR rule remains decidedly unclear. We will continue to monitor these developments, but unless and until the TDR rule is fully implemented, GSA Schedule contractors will have to continue following the existing CSP and PRC requirements.

These requirements are often difficult to navigate given the realities of the commercial world, but there are certain best practices that contractors can employ to maximize their returns under the contract and mitigate risk of noncompliance.

## Notes

[1] https://bit.ly/2Vqc8Bc

[2] https://bit.ly/3fyQmlC

[3] https://bit.ly/3fvelfR

[4] https://bit.ly/3yuHDls

[5] https://bit.ly/3Cn9E7s

[6] https://bit.ly/3rZ6S3s

[7] Note that this is distinct from a typical "most favored nation" clause — which simply requires that a customer receive the best price. With the PRC, any "discount ratio" relative to the second-best price must also be preserved, unless an applicable regulatory exception applies.

[8] https://bit.ly/37jN691

[9] https://bit.ly/3CbLDjo

[10] https://bit.ly/3AcNr9Z

[11] https://bit.ly/3fyQmlC

[12] https://bit.ly/2Vqc8Bc

[13] https://bit.ly/3fvelfR

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