

# PUBLIC SUBMISSION

<b>As of:</b> 5/6/15 8:38 AM <b>Received:</b> April 28, 2015 <b>Status:</b> Draft <b>Tracking No.</b> 1jz-8ijy-psfv <b>Comments Due:</b> May 04, 2015 <b>Submission Type:</b> Web
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**Docket:** GSA-GSAR-2014-0020

General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting;  
GSAR Case 2013-G504

**Comment On:** GSA-GSAR-2014-0020-0001

General Services Administration Acquisition Regulations: Transactional Data Reporting; GSAR  
Case 2013-G504

**Document:** GSA-GSAR-2014-0020-DRAFT-0007

Comment on FR Doc # 2015-04349

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## Submitter Information

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**Organization:** National Defense Industrial Association

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## General Comment

See attached file(s)

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## Attachments

NDIA Transactional Data Reporting Rule Response 28 Apr 2015

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April 28, 2015

U.S. General Services Administration  
Regulatory Secretariat Division (MVCB)  
1800 F Street, NW, 2nd Floor  
ATTN: Hada Flowers  
Washington, DC 20405-0001

SUBJECT: RIN 3090-AJ51, Proposed Rule, “General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting,” dated March 4, 2015

Dear Ms. Flowers:

On behalf of the more than 1,600 member companies and nearly 90,000 individual members that comprise the National Defense Industrial Association, I would like to offer the following comments on the subject proposed rule. NDIA has the following concerns:

**The burden reduction appears overstated.** The proposed rule states that “GSA believes replacing the price reduction clause’s tracking customer requirement with transactional data reporting could reduce the annual burden on contractors by more than 85 percent, or approximately \$51 million in administrative costs...” NDIA members are skeptical of an 85 percent burden reduction solely from exchanging the Price Reduction Clause (PRC) tracking customer with Transactional Data Reporting (TDR). Feedback from NDIA members suggests that the exchange might be one-for-one or even a net burden increase.

**The burden should be reimbursed.** The rule makes these costs non-reimbursable (“at no cost to the government”) in Part 552.216-75, which means the government has fully shed any costs it might suffer as a result of increased administrative burdens. Whatever the government chooses to do in terms of substituting TDR for the PRC, the costs it creates for contractors through distortions not found in the commercial marketplace should be fully recoverable by contractors.

**The government should not shift the burden onto contractors.** According to the proposed rule, “the Federal Acquisition Regulation (FAR) has long emphasized the *need for contracting officers* to conduct price analysis as part of their responsibility to establish that offered prices are fair and reasonable” (emphasis added). However, “GSA proposes to address this [requirement] through the use of a transaction data reporting clause. Under the clause *contractors would be required* to report historical information...” (emphasis added). This rule would thereby shift the responsibility for establishing price reasonableness from contracting officers to contractors. Instead, the government should work towards an approach that reduces burdens across the board. Shifting the burden, especially without allowing for reimbursement, eliminates the government’s incentive to find burden reductions. Furthermore, shifting the burden from the government to contractors undermines the goal of the Paperwork Reduction Act.

**The government should use automated, not manual, processes.** According to the proposed rule, “the current lack of transparency on prices paid by government customers has led to significant price variation, sometimes 300 percent or more, for identical purchases by federal agencies from the same commercial vendor as well as the unnecessary duplication of contract vehicles.” This purported “lack of transparency”

describes the government's insight into *its own transactional data*. Rather than propose a rule or process whereby the government will gain insight into its own transactional data in an automated fashion, the government has instead proposed to require industry to manually enter that data into a new system. This proposal is outdated and delays the investment that the government must eventually make in an automated system. The sooner that investment is made, the better, both in terms of insight into prices paid by the government for products and services and also for reduced administrative burdens on industry. Replacing PRC with an automated system would constitute a "win-win."

**Current levels of competition are sufficient to reduce prices.** According to the proposed rule, "GSA found that only about 3 percent of the total price reductions received under the [PRC] came as a result of commercial pricelist adjustments and market rate changes, with the balance for other reasons," in particular, competition. While TDR can contribute to competition, if the vast majority of price reductions already occur due to competition, the current competitive environment appears to be sufficient. FAR 15.404-1(b)(1) states, "Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor *when there is no other means for determining a fair and reasonable price*" (emphasis added). If 97 percent of current price reductions result from task award competition, not from the PRC, other means do exist to determine a fair and reasonable price: effective task award competition.

**Horizontal price comparison poses risks.** The horizontal price comparison proposed by GSA may not lead to "apples-to-apples" comparisons of products and services. 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. Further, the wide product quality variation in a category like "laptop computers" suggests that such comparisons will be equally difficult for customized or complex products. Horizontal price comparisons may not take these specific circumstances into account when looking at prices paid by different government customers. Grouping products and services by categories will likely lead to inappropriate price comparisons in some cases.

**The government must protect proprietary information.** Certain pricing data, such as terms and conditions or discounts offered to a specific government customer under a Blanket Purchase Agreement (BPA), are sensitive and would affect competition. The proposed rule is silent as to restrictions on GSA's disclosure of sensitive pricing information to competitors during price negotiations. NDIA opposes the exposure of companies' proprietary BPA information to other offerors by the government for negotiation purposes. GSA should include specific restrictions on the disclosure of sensitive pricing information and explain the safeguards it will put in place to prevent accidental exposure of such information.

I hope that these comments are helpful to you in modifying the proposed rule. Feel free to contact me at [wgoodman@ndia.org](mailto:wgoodman@ndia.org) or (703) 247-2595 if you have any questions.

Sincerely,



Will Goodman  
Vice President for Policy