



Testimony of John Stanford

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Submitted to the

House Small Business Committee
Subcommittee on Contracting and Workforce

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

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

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

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

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

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

Evaluating GSA's Proposed Rule

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

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

Cost

The first criterion, cost, considers how reforms will alter the cost of doing business with the federal government – either through changing compliance burdens, the impact of pricing requirements, or altering the resources needed to win work. Simply put, will a given change increase or decrease the cost of doing business with the federal government?

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

Complexity

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

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

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

² *Id.* at 11,625.

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

Opportunity

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

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

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

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

Missed Opportunity for Automatic Data Collection

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

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

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

Small Business Impact of Category Management

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

While there are certainly benefits to procurement vehicles, including federal supply schedules, GWACS and IDIQs, they all constrain small business participation. Government acquisition experts may consider them necessary for 21st century procurement, but by their very definition, they limit competition – inhibiting the ability of small businesses in particular to pursue certain opportunities. The initial costs of these contract vehicles are much harder for small businesses to bear than their larger counterparts, both in terms of resources and time (e.g. the nearly year long waiting period to get on an FSS). This proposed rule does little to address this concern, and even cements the use of such acquisition mechanisms for decades to come.

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

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

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