

Kevin Maynard Comments on GSA's New Procurement Data Tracking Program

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Kevin J. Maynard, a partner in Wiley Rein's Government Contracts Practice, was quoted today by *Bloomberg BNA's Federal Contracts Report* regarding the U.S. General Services Administration's (GSA) new transactional data reporting (TDR) rule. While more than 1,200 GSA Schedule contractors have volunteered to participate in the TDR pilot program, the article reports that a number of industry stakeholders have already raised questions and concerns about the rule's effectiveness.

The TDR rule, which was issued in June 2016 and is being incorporated into certain GSA Schedule contracts in phases, is part of GSA's broader "category management" initiative, which seeks to drive savings by procuring more like a single enterprise. TDR is designed to support this goal by providing GSA with greater visibility into the actual prices being paid on individual sales made under GSA Schedule contracts. Because this transaction level data was not previously collected, TDR introduced a new requirement for GSA Schedule contractors to submit monthly reports containing transactional level detail regarding sales made through the GSA Schedule—including unit price, quantity and total price paid for each GSA Schedule transaction. In exchange for agreeing to this new monthly reporting requirement, the TDR rule eliminated the requirement that Schedule contractors submit commercial sales practice (CSP) data to negotiate Schedule prices, as well as the requirement to monitor sales to commercial customers under the Price Reductions Clause (PRC), two requirements which impose significant burdens and risks on Schedule contractors.

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"It's too soon to tell what the overall impact of the TDR rule will be, since the clauses have only recently been incorporated into contracts, and only apply to a subset of Schedules," Mr. Maynard told *Bloomberg BNA*. However, one potential area of concern is that GSA could try to use the transactional data to try to "automatically push for lower Schedule prices across the board, without considering all of the factors that might have contributed to a Schedule contractor offering deeper discounts on a particular transaction, such as the size of the order, terms and conditions, or other unique aspects that might justify a lower price," Mr. Maynard wrote. "This would represent a significant change compared to the current Schedule rules," he concluded.