



April 12, 2018

Betsy Gregory-Hosler
Senior Analyst, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Subject: GAO Request for Input

Dear Ms. Gregory-Hosler,

I am writing on behalf of members of the Coalition for Government Procurement (“the Coalition”) regarding the Government Accountability Office’s (“GAO”) request for input regarding its follow-up on the 2007 Report of the Acquisition Advisory Panel (“SARA Panel Report”).

The Coalition is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for a significant percentage of the sales generated through the General Services Administration’s (“GSA”) contracts including the Multiple Award Schedule (“MAS”) program. Coalition members are also responsible for many of the commercial item solutions purchased annually by the Federal Government. Coalition members include small, medium, and large business concerns. The Coalition is proud to have worked with Government officials for more than 35 years towards the mutual goal of common sense acquisition.

In addition to report recommendations on a number of government-wide acquisition issues, like commercial practices, small business contracting, and interagency contracts, you expressed interest in acquisition issues that have gained prominence since the report was issued. Set forth below, please find the Coalition’s input from its members on the topics raised in your request.

Tools and Initiatives

Category Management

The concept of Category Management (“CM”) and “Best-in-Class” (“BIC”) were introduced to the Federal Procurement community by the Office of Federal Procurement Policy (“OFPP”) in December 2014. OFPP has since established the Category Management Leadership Council (“CMLC”), which is responsible for determining BIC contracts; issued *Government-Wide Category Management, Guidance*

Document, which provides guidance for determining BIC contracts; and, in October 2016, issued a proposed circular, which sought to establish “key principles, and strategies and policies, roles and responsibilities, and metrics to measure success” for CM government-wide. Significantly, notwithstanding the January 2017, *Regulatory Freeze Pending Review*, memorandum, although a final circular has not been issued by OFPP, it appears the implementation of CM continues through, in part, the ongoing designation of BIC contracts.

The Coalition submitted [comments](#) in response to the proposed OFPP circular in November 2017, which raised several legal, policy, and operational questions regarding OFPP’s implementation of CM. First, as a threshold matter, it remains unclear what, if any, statutory authority exists to support the agency’s mandatory designation for BIC contracts. More discussion needs to take place to understand the operation of this process against the backdrop of 41 U.S.C. 1121(f), which states that the Administrator’s authority “shall not be construed to interfere” with agency determinations of their need for, or their use of, specific property/services “including particular specifications,” or with the “determination by executive agencies of specific actions in the award or administration of procurement contracts.”

Further, rather than identifying key criteria that lead to superior performance outcomes, the current BIC criteria focus on administrative process-related measures and data reporting. Consequently, the “winners and losers” of the BIC contract selection process are being arbitrarily determined via an evaluation model that emphasizes government-unique processes, rather than contract performance characteristics that would drive best value mission support. Moreover, the current BIC criteria, as provided by the draft circular, make no provision for the inclusion of industry input. Nor is it transparent regarding how BIC designations are made beyond the publication of the BIC criteria. The Coalition continues to believe that any process for the establishment of a BIC contract should include input from across the spectrum of stakeholders, including industry.

Acquisition Gateway

The Coalition recommends the continued investment of resources by GSA into *GSA Advantage!*, eBuy, and associated training, as it is vital to the long-term future success of the MAS program in delivering best value to customer agencies. These electronic tools provide operational capabilities reflecting GSA's unique statutory role in providing acquisition support across the federal enterprise to both civilian agencies and the Department of Defense (“DoD”). GSA's role in supporting the entire federal enterprise makes it uniquely positioned, informed, and qualified to manage the strategic direction of its government programs and electronic tools, and thus, necessitates that the agency assures the usability of these tools through regular investment of resources.

In particular, based on the findings of a recent MBA Professional [Report](#) published by the Naval Postgraduate School, the investment of resources into *GSA Advantage!* and its underlying systems appears to be a compelling “low hanging fruit” opportunity for GSA to improve its programs from a position of strength. Specifically, the report was completed in response to a request from the Air Force, and it provides a business case analysis whether the Service could derive savings by establishing an e-

Commerce platform preference. Significantly, the report found, among other things, that, when comparing the acquisition outcomes for GSA Advantage and Amazon Business for the top 60 commercially available items purchased by the Air Force using government purchase cards (“GPCs”), prices were lower on GSA Advantage more than 80 percent of the time; prices on GSA Advantage were still lower than those on Amazon Business after applying quantity discounts; and shipping was both cheaper and faster on GSA Advantage. A key take-away from the report is that, notwithstanding demonstrated benefits of GSA Advantage, which also included compliance assurance, user experience is very important, and the Coalition believes that, at a minimum, GSA should review the results of the report and work to improve its platform by updating the user experience and improving the search function.

Procurement Through Commercial e-Commerce Portals

Section 846 of the Fiscal Year (“FY”) 2018 National Defense Authorization Act (“NDAA”) establishes a framework for the implementation and use of e-Commerce portals across the government for the acquisition of certain commercial off-the-shelf items. Pursuant to the section, GSA is charged with establishing and managing the e-Commerce Portal program. Following its enactment, there has been much discussion surrounding the legislation, and at the heart of these conversations were the fundamental questions of competition and the balance between government-unique requirements and commercial terms and conditions. The answer(s) to this fundamental challenge will shape e-Procurement in the federal space over the next decade.

To assist with identifying a common-sense procurement solution, the Coalition, in its [comments](#) submitted following GSA’s public meeting on Section 846 in January 2018, identified the following eleven “strategic principles,” which it recommends that the government apply when developing future procurements through e-Commerce portals:

1. Ensure long-term online marketplace durability and competition by identifying multiple portal vendors/providers and multiple sellers across multiple portal providers.
2. Require the identification and transparency of any fees associated directly or indirectly (*e.g.*, paid by a seller to a portal provider) with a transaction under the pilot.
3. Create a culture of best value in the selection and use of acquisition platforms taking into consideration market-based pricing, differences in terms and conditions, and total costs.
4. Ensure that e-Commerce solutions are easy to use, manage, and maintain for both purchasers and sellers.
5. Develop programs that are flexible enough to accommodate rapidly changing technology and divergent customer needs.
6. To the extent that it is advantageous to stakeholders, leverage existing government contracting vehicles to establish business relationships with commercial e-portal providers. This principle would help avoid additional contract duplication and avoid unnecessary confusion in the government’s existing supplier base.

7. To the extent that the pilot involves a commercial online marketplace, clearly identify the party, with whom, the Government possesses privity of contract for the purposes of all legal compliance, and how enforcement will be executed. Without privity of contract, the Government may be delegating inherently governmental functions and lose its ability to ensure compliance with government-specific requirements.
8. Set a minimum standard of cyber-security for e-Commerce portals.
9. Establish protocols to bar counterfeit and gray market items to reduce threats to national security.
10. Explicitly state the extent to which the pilot vendor must flow-down necessary government terms and conditions to sellers under its contracts.
11. Provide that ownership of any data directly or indirectly related to a given transaction traversing the portal, whether aggregated or otherwise resides with the Government, not the portal provider. Thus, the portal provider may not use that data for any other purpose than facilitating the immediate transaction.

Although e-Commerce portals offer an exciting alternative for the acquisition of commercial items, the Coalition maintains that such portals should not be the only method that the government uses to acquire commercial items. Consequently, as GSA and OFPP explore e-Commerce alternatives, the Coalition urges that the Government use any lessons learned to streamline and enhance the value of all commercial item acquisitions. To the extent that GSA and OFPP determine that certain government-specific requirements will be waived or modified for items purchased through an e-Commerce portal, the same waivers or related modifications should be applied to commercial items acquired through existing programs. Further, we urge the Government to minimize redundancy with existing government e-Commerce platforms and increase clarity as to how and when various commercial item vehicles should be used. By way of example, under existing law, the government could establish an e-Commerce schedule to offer various e-Commerce vehicles for purchase, all operating under the same terms and conditions, including compliance requirements.

Challenges Related to IT Acquisition

Requirements Definition

Sound requirements development is vital for an efficient and effective procurement system that delivers best value outcomes for the government and the taxpayer. Indeed, sound requirements development is a fundamental commercial practice because it increases competition and creates the framework for efficient and effective contractor performance. For instance, GSA's Centers of Excellence ("CoE") initiative, which is currently being piloted by the Department of Agriculture, provides an opportunity to improve IT requirements development by incorporating greater understanding of mission priorities into the decision-making process. Although it may not grab headlines, establishing an infrastructure that delivers sound requirements development is crucial for the government, as it will improve acquisition outcomes and produce savings for the taxpayer.

Barriers to Entry for Non-Traditional Companies

The Coalition believes that the Government should seek to eliminate barriers to market entry by identifying and eliminating requirements, such as the Price Reductions Clause (“PRC”) and, based on the outcomes of the pilot program, possibly the Transactional Data Reporting (“TDR”) final rule. Significantly, pursuant to Section 431 of Title 41 of the United States Code, OFPP already has the authority to waive statutes, including their associated regulatory and policy requirements, for commercial item acquisitions.¹ In addition, the Coalition maintains that the government, when seeking to streamline burdens for non-traditional vendors, should ensure that identified barriers be removed for both non-traditional and traditional companies to avoid the creation of new burdens associated with creating two separate systems.

Acquisition Advisory Panel (“AAP”) Report Recommendation Categories, Progress Made, and Remaining Challenges

Small Business

The GSA Schedules Program is the single most successful government-wide contracting program, providing agencies with cost-effective, streamlined access to best value commercial services, products and solutions. Notably, the Schedules program enjoys significant participation from small businesses, as its flexibilities allow for the setting aside of orders to achieve small business goals. The Coalition supports the continuation of efforts made that have driven this success.

Federal Procurement Data

The usability, *i.e.* intuitiveness, of the Federal Procurement Data System (“FPDS”) has historically been a significant challenge for the procurement community. Although improvements to data accessibility and accuracy have been made, the system is being asked to track data at a level of specificity that exceeds what was intended, and remains a significant obstacle impeding comprehensive analysis. Indeed, the TDR final rule appears to be a direct result of the inability to access reliable data to inform purchasing decisions. The Coalition supports additional efforts, such as e-invoicing², to address the accessibility and accuracy of the data in FPDS.

Performance-Based Acquisition

The Coalition supports performance-based contracting that measures outcomes rather than specifying the method of performance. By expanding the use of performance-based contracting, the government could increase its access to innovative solutions, increase competition, and achieve greater efficiencies and savings for customer agencies. FAR 37 requires, “the use of performance-based acquisitions for

¹ See: 41 USC 431(a)(3)

² See: Miller, J. (2018, February 2). GSA’s Murphy sees another path to reduce commercial pricing burdens on vendors. *Federal News Radio*. <https://federalnewsradio.com/reporters-notebook-jason-miller/2018/02/gsas-murphy-sees-another-path-to-reduce-commercial-pricing-burden-on-vendors/>

services to the maximum extent practicable.” The Coalition recommends the creation of performance-based acquisition training courses in the Defense Acquisition University, as well as the creation a certification or training track that encourages the acquisition workforce to expand its performance-based acquisition skill set. In addition, OFPP could help drive increased utilization of performance-based acquisitions through the development of Key Performance Indicators (“KPIs”).

Interagency Contracting

The Coalition supports GSA Administrator Emily Murphy’s focus on reducing unnecessary contract duplication. Interagency contracting can be a significant tool for reducing contract duplication, and, in this regard, the Coalition recommends the following:

- Shift Preference from Open Market to Existing Vehicles

Pursuant to FAR 17.502-2, agencies are required to complete Determinations and Findings, in accordance with the Economy Act, before they can utilize pre-existing vehicles, such as Government-wide Acquisition Contracts (“GWACS”) and the GSA Schedules Program. By removing this requirement, and thus encouraging the use of existing contracts, the Government immediately could reduce unnecessary contract duplication and achieve cost savings.

- Improve BIC Determinations

If BIC criteria are to be used moving forward, the current criteria should be amended to address several legal, policy, and operational questions. As noted, rather than identifying key criteria that lead to superior performance outcomes, the current BIC criteria focus on compliance with administrative process-related measures over best value performance, and data reporting that is imposed on contractors through initiatives, like TDR. Moreover, the current BIC criteria, as identified in the draft circular, make no provision for the inclusion of industry input. Nor do stakeholders have transparency in the BIC designation process beyond the publication of the BIC criteria. In addition, as currently constructed, the draft circular overemphasizes pricing at the expense of the Total Acquisition Cost (“TAC”). Indeed, to the extent that a determination of price “savings” fails to include an assessment of both the direct and indirect costs of CM implementation, then the TAC simply cannot be determined accurately.

The foregoing covers just some of the member questions about BIC contracts that must be answered if the criteria is to be used moving forward.

- Ensure Effective Implementation of Order Level Materials (“OLM”) Final Rule

The Coalition commends GSA for finalizing the OLM rule, which will help to further streamline the Schedules program, to reduce incentives for agencies to establish duplicative contracts, and to minimize burdens for Government and industry. By incorporating OLMs into the MAS program, GSA will enhance the program's overall efficiency and effectiveness by providing the necessary flexibility to deliver best value solutions to customer agencies, while simultaneously reducing duplicative efforts and administrative burden for both Government and industry. By increasing the ability of customer agencies and MAS contractors to seek, compete, award, and perform commercial-based solutions that meet agency mission requirements, GSA can transform the MAS program into a channel for government access to commercial market competition and innovation.

Commercial Practices

Coalition member companies offer some of the most innovative technologies, products, services, and solutions available in the commercial market. As an association, the Coalition advocates for putting "commercial" back in commercial item contracting so that the Federal government can benefit from the efficiencies, innovation, and competitive pricing commercially available. To this end, the Coalition supports recent legislative, regulatory, and policy efforts, such as the OLM final rule, along with the elimination of Government-unique requirements, such as the PRC.

Acquisition Workforce

The Coalition supports GAO's confirmation that challenges, particularly challenges associated with professional development, remain as it relates to the Acquisition Workforce. In particular, the Coalition recommends that the Government implement changes, such as increasing acquisition workforce compensation, intra-agency contracting rotations, inter-agency staff details, and private sector program exchanges to improve awareness and experience of how commercial practices are leveraged in different environments.

The Coalition appreciates GAO for its outreach to industry. If there are any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,



Roger Waldron
President