



e-Commerce Pilot Recommendations

Background

Senate staffers invited industry to participate in a Roundtable meeting on October 4, 2017 to discuss the online marketplace proposal in Section 801 of the FY2018 NDAA. The Coalition for Government Procurement accepted the invitation and out of that meeting industry was asked to provide their thoughts on a pilot for the online marketplace proposal. The following document is the Coalition's response.

e-Commerce Pilot Recommendations

In response to the Committee request, the Coalition for Government Procurement (Coalition) recommends that, should the Committee consider a Pilot Test of the concepts intended to be represented by Section 801 of the FY18 NDAA, the focus of that test should not be limited to only an “online marketplace.” Rather, the pilot should focus on e-commerce solutions to streamline the Federal procurement process for commercial items; facilitate and remain open to e-commerce innovation; and advance the adoption of commercial best practices.

As it stands, Section 801 of the FY18 NDAA embodies the most consequential procurement policy changes in a generation. Considering the requirements of the e-commerce proposal, it is likely that only one or two providers would possess the capability and potential regulatory compliance (*e.g.*, FedRAMP) necessary to participate. Thus, the proposal could result in monopoly or duopoly control over access to the Federal market for commercial items. Monopolies and duopolies can of course lead to higher prices, limit competition, and create barriers to the Federal market to new entrants and innovative technologies.

Based on the Coalition’s market research of product suppliers who would be eligible for participation in the Section 801 marketplace, it is typical for e-commerce providers to charge the suppliers transaction fees (in addition to other fees that may be charged) on purchases made through their platform. For illustration purposes (recognizing that Section 801 is limited to COTS items, excluding services) in fiscal year 2016, the Federal Government spent approximately \$52.9 billion on products using commercial item acquisition procedures. Assuming the commercial e-commerce provider charged a 10% fee to suppliers, the contract(s) proposed under Section 801 would have an estimated value of between \$5.29 billion and \$5.88 billion annually, which could make the e-commerce provider(s) one of the top twenty largest contractors in the Federal market, without having to have gone through a full and open competition, consistent with the Competition in Contracting Act (CICA).

The on-line platform proposed by Section 801 will impact the Executive Branch, Congress, and American suppliers. Given the immense taxpayer investment and impact of such a change to the Federal procurement system, the Coalition recommends that Congress conduct a thorough, metric-based examination of the e-commerce concepts before pursuing implementation government-wide. This examination should cover the total direct and indirect costs, benefits, and potential unintended consequences of its use for Federal departments and agencies, American suppliers, and the U.S. economy.

Prior to launching a pilot, we have identified a pilot’s “preflight checklist,” a review of which, we recommend the Government conduct:

Pilot “Preflight” Checklist

1. Identify multiple solutions for comparison in the pilot, and avoid locking-in on one product solution, such as a “marketplace,” or one sector, such as the commercial sector.
2. Identify longstanding policies and procedures that should be waived as part of the pilot.
3. Identify metrics for evaluating the direct and indirect costs to determine the Total Acquisition Cost (TAC). This process should be ongoing, utilizing lessons learned throughout the lifespan of the pilot to ensure their effectiveness. In this regard, it is imperative that, given the compliance burden shift to the Government under Section 801, the costs of that compliance be captured.
4. Require the identification and examination by the government of any fees associated directly or indirectly with a transaction under the pilot, and assess whether such fees should be transparent to

Federal buyers in a manner similar to the transparency of existing contract vehicles used by the Government.

5. Determine whether there are any additional fee constructs that should be restricted to avoid incenting pilot vendors from using access to Government business as a means to extract concessions in commercial market negotiations, and vice-versa.
6. Clarify the data rights issues involved with the pilot, *e.g.*:
 - How to allocate and balance the data rights of the Government, suppliers, and pilot platform providers.
 - Define how all pilot transactional data will be protected.
 - Regarding the Government’s transactional data, what parameters will exist to protect operational security or the Mosaic Effect of data release.
 - Regarding the Government’s transactional data, under what circumstances, if any, would it be released, and, if released, what parameters would define the compensation for that release and the restriction of use?
7. Examine and address cybersecurity risks involved in widespread use of government credit cards.
8. Assess the ability to assure compliance with statutory and regulatory requirements applicable to the commercial items, which, whether stated in the bill or not, still apply by operation of law or regulation, *e.g.*-
 - Trade Agreements Act
 - Berry Amendment
 - Small business
 - Cybersecurity standards
 - AbilityOne
 - Suspension and debarment
9. Assess the economic impact on small business.
10. 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.
11. To the extent that the pilot involves a commercial online marketplace, explicitly state that the pilot vendor must flow-down necessary Government terms and conditions to sellers under its contracts
12. In no case may the pilot vendor demand surrender of, or assert rights in, any Government, seller, or other data associated with the pilot.

Pilot Scope

- \$10,000 per transaction limit (requirements may not be broken up to fall under the limitation)
- 18F within GSA’s Federal Acquisition Service to test in parallel
 1. Commercial e-commerce solutions (not just online marketplaces)
 2. Government solutions (*e.g.*, GSA Schedules’ GSA Advantage and eBuy)
 3. Other e-commerce solutions
- Measure the effectiveness of the above e-commerce solutions using metrics identified based on lessons learned from the completion of the Pilot “Preflight” Checklist. For example, but not limited to:
 - Total Acquisition Costs
 - Protection of data rights
 - Cybersecurity protections
 - Ability of the tools to meet Federal compliance requirements and address gray market/counterfeit items
 - Impact on small business

- When conducting the pilot care should be taken to ensure multiple e-commerce solutions are evaluated on an equal basis.
- Any pilot should include modernization of existing government platforms, as appropriate, to ensure a sound comparison between the various e-commerce solutions being evaluated.