

1     **Subtitle A—Defense Acquisition**  
2     **Streamlining and Transparency**

3     **PART I—ACQUISITION SYSTEM STREAMLINING**

4     **SEC. 801 [Log 64842]. PROCUREMENT THROUGH ONLINE**  
5             **MARKETPLACES.**

6             (a) ESTABLISHMENT OF PROGRAM.—The Adminis-  
7     trator of General Services shall establish a program to  
8     procure commercial products through online marketplaces  
9     for purposes of expediting procurement and ensuring rea-  
10    sonable pricing of commercial products. The Adminis-  
11    trator shall carry out the program in accordance with this  
12    section, through more than one contract with more than  
13    one online marketplace provider, and shall design the pro-  
14    gram to enable Government-wide use of such market-  
15    places.

16            (b) USE OF PROGRAM BY SECRETARY OF DE-  
17    FENSE.—The Secretary of Defense shall purchase, as ap-  
18    propriate, commercial products for the Department of De-  
19    fense using the program established pursuant to sub-  
20    section (a).

21            (c) CRITERIA FOR ONLINE MARKETPLACES.—The  
22    Administrator shall ensure that an online marketplace  
23    used under the program established pursuant to sub-  
24    section (a)—

1 (1) is used widely in the private sector, includ-  
2 ing in business-to-business e-commerce;

3 (2) provides dynamic selection, in which sup-  
4 pliers and products may be frequently updated, and  
5 dynamic pricing, in which product prices may be fre-  
6 quently updated;

7 (3) enables offers from multiple suppliers on  
8 the same or similar products to be sorted or filtered  
9 based on product and shipping price, delivery date,  
10 and reviews of suppliers or products;

11 (4) does not feature or prioritize a product of  
12 a supplier based on any compensation or fee paid to  
13 the online marketplace by the supplier that is exclu-  
14 sively for such featuring or prioritization on the on-  
15 line marketplace;

16 (5) provides the capability for procurement  
17 oversight controls, including spending limits, order  
18 approval, and order tracking;

19 (6) provides consolidated invoicing, payment,  
20 and customer service functions for all transactions;

21 (7) satisfies requirements for supplier and prod-  
22 uct screening in subsection (d); and

23 (8) collects information necessary to fulfill the  
24 information requirements in subsection (h).

1 (d) SUPPLIER AND PRODUCT SCREENING.—The Ad-  
2 ministrator shall—

3 (1) provide or ensure electronic availability to  
4 an online marketplace provider awarded a contract  
5 pursuant to subsection (a), no less frequently than  
6 the first day of each month—

7 (A) the list of suspended and debarred  
8 contractors contained in the System of Award  
9 Management maintained by the General Serv-  
10 ices Administration, or any successor system;

11 (B) a list of suppliers, by product, that  
12 certify compliance with the requirements of sec-  
13 tion 2533a or 2533b of title 10, United States  
14 Code;

15 (C) a list of suppliers, by product, that  
16 comply with the requirements of, or are subject  
17 to an exception under, chapter 83 of title 41,  
18 United States Code;

19 (D) a list of suppliers, by product, with re-  
20 spect to which the President has issued a waiv-  
21 er under section 301 of the Trade Agreements  
22 Act of 1979 (19 U.S.C. 2511);

23 (E) a list of products, by supplier, that are  
24 suitable for the Federal Government to procure

1           pursuant to section 8503 of title 41, United  
2           States Code; and

3           (F) a list of suppliers, by product, that are  
4           small business concerns;

5           (2) conduct reviews of suppliers to establish the  
6           lists required under paragraph (1);

7           (3) ensure that an online marketplace used  
8           under the program established pursuant to sub-  
9           section (a) provides the ability to search suppliers  
10          and products and identify such suppliers and prod-  
11          ucts as authorized or not authorized for purchase  
12          during the procurement and order approval process  
13          based on the most recent lists provided pursuant to  
14          paragraph (1).

15          (e) RELATIONSHIP TO OTHER PROVISIONS OF  
16          LAW.—(1) Notwithstanding any other provision of law, a  
17          procurement of a product made through an online market-  
18          place under the program established pursuant to sub-  
19          section (a)—

20                 (A) is deemed to satisfy requirements for full  
21                 and open competition pursuant to section 2304 of  
22                 title 10, United States Code, and section 3301 of  
23                 title 41, United States Code, if there are offers from  
24                 two or more suppliers of such a product or similar  
25                 product with substantially the same physical, func-

1 tional, or performance characteristics on the online  
2 marketplace; and

3 (B) is deemed to be an award of a prime con-  
4 tract for purposes of the goals established under sec-  
5 tion 15(g) of the Small Business Act (15 U.S.C.  
6 644(g)), if the purchase is from a supplier that is  
7 a small business concern.

8 (2) Nothing in this subsection shall be construed as  
9 limiting the authority of a department or agency to re-  
10 strict competition to small business concerns.

11 (f) REQUIREMENT TO USE STANDARD TERMS AND  
12 CONDITIONS OF ONLINE MARKETPLACES.—Notwith-  
13 standing any other provision of law, a procurement of a  
14 product through a commercial online marketplace used  
15 under the program established pursuant to subsection (a)  
16 shall be made under the standard terms and conditions  
17 of the marketplace relating to purchasing on the market-  
18 place, and the Administrator shall not require an online  
19 marketplace to modify its standard terms and conditions  
20 as a condition of receiving a contract pursuant to sub-  
21 section (a).

22 (g) PROCEDURES FOR AWARD OF CONTRACT.—Not-  
23 withstanding section 2304 of title 10, United States Code,  
24 or any other provision of law, the award of a contract to

1 an online marketplace provider pursuant to subsection (a)  
2 may be made without the use of full and open competition.

3 (h) ORDER INFORMATION.—

4 (1) IN GENERAL.—The Administrator shall re-  
5 quire each online marketplace provider awarded a  
6 contract pursuant to subsection (a) to provide to the  
7 General Services Administration, not less frequently  
8 than the first day of each month, the ability to elec-  
9 tronically access the following information with re-  
10 spect to each product ordered during the preceding  
11 month:

12 (A) The product name and description.

13 (B) The date and time of the order.

14 (C) The product price.

15 (D) The person or entity within the de-  
16 partment or agency that purchased the product  
17 and, if appropriate, the official who authorized  
18 the purchase.

19 (E) The delivery address specified in the  
20 order for the product.

21 (F) The number of suppliers that offered  
22 the same product or a similar product with sub-  
23 stantially the same physical, functional, or per-  
24 formance characteristics on the same date and  
25 time that the product was ordered.

1           (2) DATA SYSTEM.—The Administrator shall  
2           ensure that order information listed in paragraph  
3           (1) is entered into the Federal Procurement Data  
4           System described in section 1122 of title 41, United  
5           States Code.

6           (i) LIMITATION ON INFORMATION DISCLOSURE.—In  
7           any contract awarded to an online marketplace provider  
8           pursuant to subsection (a), the Administrator shall require  
9           that the provider agree not to sell or otherwise make avail-  
10          able to any third party any of the information listed in  
11          subsection (h)(1) in a manner that identifies the Federal  
12          Government, or any of its departments or agencies, as the  
13          purchaser, except with written consent of the Adminis-  
14          trator.

15          (j) COMPTROLLER GENERAL REVIEW OF SMALL  
16          BUSINESS PARTICIPATION.—

17                 (1) REPORT REQUIREMENT.—Not later than  
18                 three years after a contract with an online market-  
19                 place provider is awarded pursuant to subsection  
20                 (a), the Comptroller General of the United States  
21                 shall submit to the committees listed in paragraph  
22                 (2) a report on small business participation in the  
23                 program established pursuant to subsection (a). The  
24                 report shall include—

1 (A) the number of small business concerns  
2 that have registered or that have sold goods  
3 with at least one online marketplace provider;

4 (B) trends in small business participation;

5 (C) the effect, if any, of the program on  
6 the ability of agencies to meet goals established  
7 under section 15(g) of the Small Business Act  
8 (15 U.S.C. 644(g)); and

9 (D) a discussion of the limitations, if any,  
10 to small business participation in the program.

11 (2) COMMITTEES.—The committees listed in  
12 this paragraph are the following:

13 (A) The Committees on Armed Services of  
14 the Senate and House of Representatives.

15 (B) The Committee on Homeland Security  
16 and Governmental Affairs of the Senate and the  
17 Committee on Oversight and Government Re-  
18 form of the House of Representatives.

19 (C) The Committee on Small Business and  
20 Entrepreneurship of the Senate and the Com-  
21 mittee on Small Business of the House of Rep-  
22 resentatives.

23 (k) DEFINITIONS.—In this section:

24 (1) ONLINE MARKETPLACE PROVIDER.—The  
25 term “online marketplace provider” means a com-



1       merchial, non-Government entity providing an online  
2       portal for the purchase of commercial products ag-  
3       gregated, distributed, sold, or manufactured by such  
4       entity. The term does not include an online portal  
5       managed by the Government for, or predominantly  
6       for use by, Government agencies.

7               (2) COMMERCIAL PRODUCT.—The term “com-  
8       mercial product” means a commercially available off-  
9       the-shelf item, as defined in section 104 of title 41,  
10       United States Code, except the term does not in-  
11       clude services.

12              (3) SMALL BUSINESS CONCERN.—The term  
13       “small business concern” has the meaning given  
14       such term under section 3 of the Small Business Act  
15       (15 U.S.C. 632).