Subtitle A—Defense Acquisition Streamlining and Transparency

PART I—ACQUISITION SYSTEM STREAMLINING

SEC. 801 [Log 64842]. PROCUREMENT THROUGH ONLINE MARKETPLACES.

(a) Establishment of Program.—The Administrator of General Services shall establish a program to procure commercial products through online marketplaces for purposes of expediting procurement and ensuring reasonable pricing of commercial products. The Administrator shall carry out the program in accordance with this section, through more than one contract with more than one online marketplace provider, and shall design the program to enable Government-wide use of such marketplaces.

(b) Use of Program by Secretary of Defense.—The Secretary of Defense shall purchase, as appropriate, commercial products for the Department of Defense using the program established pursuant to subsection (a).

(c) Criteria for Online Marketplaces.—The Administrator shall ensure that an online marketplace used under the program established pursuant to subsection (a)—
(1) is used widely in the private sector, including in business-to-business e-commerce;

(2) provides dynamic selection, in which suppliers and products may be frequently updated, and dynamic pricing, in which product prices may be frequently updated;

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

(4) does not feature or prioritize a product of a supplier based on any compensation or fee paid to the online marketplace by the supplier that is exclusively for such featuring or prioritization on the online marketplace;

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

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

(7) satisfies requirements for supplier and product screening in subsection (d); and

(8) collects information necessary to fulfill the information requirements in subsection (h).
(d) Supplier and Product Screening.—The Administrator shall—

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

(A) the list of suspended and debarred contractors contained in the System of Award Management maintained by the General Services Administration, or any successor system;

(B) a list of suppliers, by product, that certify compliance with the requirements of section 2533a or 2533b of title 10, United States Code;

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

(D) a list of suppliers, by product, with respect to which the President has issued a waiver under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511);

(E) a list of products, by supplier, that are suitable for the Federal Government to procure
pursuant to section 8503 of title 41, United States Code; and

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

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

(3) ensure that an online marketplace used under the program established pursuant to subsection (a) provides the ability to search suppliers and products and identify such suppliers and products as authorized or not authorized for purchase during the procurement and order approval process based on the most recent lists provided pursuant to paragraph (1).

(e) RELATIONSHIP TO OTHER PROVISIONS OF LAW.—(1) Notwithstanding any other provision of law, a procurement of a product made through an online marketplace under the program established pursuant to subsection (a)—

(A) is deemed to satisfy requirements for full and open competition pursuant to section 2304 of title 10, United States Code, and section 3301 of title 41, United States Code, if there are offers from two or more suppliers of such a product or similar product with substantially the same physical, func-
tional, or performance characteristics on the online marketplace; and

(B) is deemed to be an award of a prime contract for purposes of the goals established under section 15(g) of the Small Business Act (15 U.S.C. 644(g)), if the purchase is from a supplier that is a small business concern.

(2) Nothing in this subsection shall be construed as limiting the authority of a department or agency to restrict competition to small business concerns.

(f) REQUIREMENT TO USE STANDARD TERMS AND CONDITIONS OF ONLINE MARKETPLACES.—Notwithstanding any other provision of law, a procurement of a product through a commercial online marketplace used under the program established pursuant to subsection (a) shall be made under the standard terms and conditions of the marketplace relating to purchasing on the marketplace, and the Administrator shall not require an online marketplace to modify its standard terms and conditions as a condition of receiving a contract pursuant to subsection (a).

(g) PROCEDURES FOR AWARD OF CONTRACT.—Notwithstanding section 2304 of title 10, United States Code, or any other provision of law, the award of a contract to
an online marketplace provider pursuant to subsection (a) may be made without the use of full and open competition.

(h) Order Information.—

(1) In general.—The Administrator shall require each online marketplace provider awarded a contract pursuant to subsection (a) to provide to the General Services Administration, not less frequently than the first day of each month, the ability to electronically access the following information with respect to each product ordered during the preceding month:

(A) The product name and description.

(B) The date and time of the order.

(C) The product price.

(D) The person or entity within the department or agency that purchased the product and, if appropriate, the official who authorized the purchase.

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

(F) The number of suppliers that offered the same product or a similar product with substantially the same physical, functional, or performance characteristics on the same date and time that the product was ordered.
(2) DATA SYSTEM.—The Administrator shall ensure that order information listed in paragraph (1) is entered into the Federal Procurement Data System described in section 1122 of title 41, United States Code.

(i) LIMITATION ON INFORMATION DISCLOSURE.—In any contract awarded to an online marketplace provider pursuant to subsection (a), the Administrator shall require that the provider agree not to sell or otherwise make available to any third party any of the information listed in subsection (h)(1) in a manner that identifies the Federal Government, or any of its departments or agencies, as the purchaser, except with written consent of the Administrator.

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

(1) REPORT REQUIREMENT.—Not later than three years after a contract with an online marketplace provider is awarded pursuant to subsection (a), the Comptroller General of the United States shall submit to the committees listed in paragraph (2) a report on small business participation in the program established pursuant to subsection (a). The report shall include—
(A) the number of small business concerns that have registered or that have sold goods with at least one online marketplace provider;

(B) trends in small business participation;

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

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

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

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

(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(C) The Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(k) DEFINITIONS.—In this section:

(1) ONLINE MARKETPLACE PROVIDER.—The term “online marketplace provider” means a com-
commercial, non-Government entity providing an online portal for the purchase of commercial products aggregated, distributed, sold, or manufactured by such entity. The term does not include an online portal managed by the Government for, or predominantly for use by, Government agencies.

(2) Commercial product.—The term “commercial product” means a commercially available off-the-shelf item, as defined in section 104 of title 41, United States Code, except the term does not include services.

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