

September 26, 2019

The Honorable Robert E. Lighthizer
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Mr. Ambassador,

Coalition for Government Procurement (Coalition) members are seeking your consideration and assessment of the Government's efforts to implement an e-commerce procurement platform for use by federal agencies. This platform purportedly seeks to bring commercial market solutions to the Government's acquisition of certain commercial items, but in so doing, it will be implemented for orders below the Micro Purchase Threshold.¹ Those orders, then, will not be subject to a number of laws, including the Trade Agreements Act and the Buy American Act, which are within your agency's purview. Given the risk that transactions on this platform will run afoul of the goals of trade policy, we believe your insights would be helpful to our understanding whether the Government's efforts here support your consistent coordination of U.S. trade policy.

By way of background, the Coalition is a non-profit association of firms selling commercial services and products to the Federal Government. Its members collectively account for a significant percentage of the sales generated through GSA contracts, including the Multiple Award Schedule (MAS) program. Coalition members also are responsible for many of the commercial item solutions purchased annually by the Federal Government. These members include small, medium, and large business concerns.

Pursuant to Section 846 of the Fiscal Year 2018 National Defense Authorization Act (NDAA), the Administrator of General Services (GSA) is charged with establishing a government-wide program for agencies to procure certain commercial products through commercial e-commerce portals. This program was supposed to be carried out through the use of multiple contracts with multiple commercial e-commerce solution providers. It was anticipated that the program would be implemented in phases and involve market analysis.

The program's genesis was not without controversy. There were concerns that one or a small number of dominant entities would control market access, potentially restricting different e-commerce solutions. Notwithstanding the fact that the language of Section 846 and its legislative history show that Congress's direction and intent was to afford the providers of multiple e-commerce solutions access and the opportunity to participate in the Government e-commerce market, that controversy exists today.

The e-commerce program being implemented by GSA is significant. Indeed, just the proposed "pilot" of the initiative alone will limit market access to only one e-commerce platform solution for up-to-five years and implicate up-to-\$30 billion dollars in market value. Under these circumstances, Coalition members are very concerned that this program will put the significant heft of the Government behind

¹ See FAR Part 2.

unduly restricting competition overall. As for GSA, rather than relying on the forces of the competitive market, it appears to have arrogated to itself the role of determining winners and losers for e-commerce solutions.

Coalition members recognize the critical importance of your leadership in promoting U.S. trade policy in support of business opportunities for U.S. firms. In particular, your office assures that domestic companies have a fair opportunity to compete globally in the procurements of various governments. Here, Coalition members fear that, by basing an entire program on the use of a procurement mechanism intended for simplified acquisition (the exceptions to laws for orders valued under the Micro Purchase Threshold), the Government is creating a channel for foreign producers to enter the U.S. Government market, disadvantaging U.S. firms in their own country. In addition, we are concerned that this effort risks introducing cyber and supply chain risks into Government systems, as it opens an e-commerce channel, through which, products from non-TAA signatory countries, like China, could flow. It is for this reason that we have endorsed the position that any e-commerce solution be compliant with, and enforce compliance with, relevant trade laws, like the TAA.

These and other serious issues have been raised in various comments to the Government during this implementation process, but they have gone unaddressed. In the meantime, GSA is moving apace to secure contract award by the new year. For this reason, Coalition members seek your thoughts about GSA's implementing and contracting materials to assess their impact on U.S. domestic firms seeking to do business in the U.S. Government market. To this end, we are enclosing links to GSA's key planning documents.

Coalition members hope you are able share your views on this matter with the materials we are providing, but if you need additional information or otherwise would like to discuss this matter, please feel free to contact me at tsisti@thecgp.org or 202-751-2035.

Thank you in advance for your time and consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Thomas R. Sisti". The signature is written in a cursive, flowing style.

Thomas R. Sisti
Executive Vice President and General Counsel

Links to Key Government e-Commerce Planning Documents

Planning Documents:

- [July 2, 2019 Draft RFP](#)
- [April 2019 Phase 2 Report](#)
- [December 4, 2018 RFI](#)
- [June 15, 2018 Supplier RFI](#)
- [June 15, 2018 Platform Provider RFI](#)
- [March 2018 Phase 1 Report](#)