



May 29, 2018

Laura Stanton
Assistant Commissioner, Office of Enterprise Strategy Management
General Services Administration (GSA)
1800 F Street, NW
Washington, DC 20405

Dear Laura,

The Coalition for Government Procurement (“the Coalition”) appreciates GSA’s outreach to industry concerning its plans to implement e-Commerce portal(s) per Section 846 of the FY2018 National Defense Authorization Act (NDAA). As a follow-up to the industry dialogue on April 3, the Coalition recommends that GSA respond to a number of questions during Phase II of the *Procurement Through e-Commerce Portals Implementation Plan*.

The Coalition is a non-profit association of firms selling commercial products and services to the Federal Government. Our members collectively account for a significant percentage of the sales generated through 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. These 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.

Coalition members commend GSA and the Office of Federal Procurement Policy (OFPP) for seeking stakeholder input on Section 846 during a public meeting in January 2018, and immediately following the release of the Implementation Plan in April. There is one area, however, where increased transparency and public dialogue would have been beneficial, specifically, the plan’s Legislative Proposals that have been submitted to Congress.

The requested increase in the micro-purchase threshold (MPT) to \$25,000 has the potential to significantly expand the market for micro-purchases from \$7.5 billion to approximately \$15.5 billion government-wide. These purchases largely take place under existing contracts in which commercial items have been pre-vetted to meet certain government-unique/statutory requirements. If a \$25,000 MPT for purchases made through e-Commerce portals is established, a portion of the demand for commercial items below the MPT is likely to shift to the e-Commerce portal where purchases below \$25,000 would not be required to be compliant with certain long-standing statutory requirements and provisions. As outlined in Attachment 1, if the

recommended MPT were enacted, for purchases below \$25,000 made through commercial portals there would be:

- No Prohibition on Contracting with Inverted Domestic Corporations
- No Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- No Prohibition of Segregated Facilities
- No Buy American Act
- No small business preferences or provisions
- No competition requirements
- No Organizational Conflict of Interest clauses or review
- No sole-source justifications

Such a shift will create parallel procurement systems: one for compliant products under pre-existing contracts, and the other for products that do not meet certain government requirements through e-Commerce portals. Coalition members would like to better understand if this outcome is intended by GSA.

The Coalition also requests that GSA respond to the following questions from industry during Phase II of the implementation plan.

Phase II Questions

1. What criteria will GSA use to select commercial online marketplace providers?
2. How does the e-Commerce platform strategy outlined in the Implementation Plan align with the government's Category Management objectives, specifically—
 - a. incentivizing agencies to maximize their cumulative buying power
 - b. volume based pricing
 - c. increasing Spend Under Management through pre-existing contracts
3. What safeguards will the online marketplace vendors be expected to have to reduce the risk of counterfeit goods from entering the government's supply chain?
4. How will "pay-to-play" arrangements (*e.g.* discounts, fees, or demands for access to, or transfer of any level of rights in technical or transactional data) in e-Commerce portals be addressed to ensure fair opportunity competition, especially for small businesses?
5. Will fees associated directly or indirectly (*e.g.*, paid by a seller to a portal provider) be required to be transparent to customer agencies and to the public?
6. Will the government have exclusive ownership of any data, aggregated or otherwise, directly or indirectly related to a given transaction traversing a portal?
 - a. If that data is shared with a portal provider, on what basis will consideration be paid by the portal provider?
7. How will GSA ensure that Federal agencies do not pay taxes for purchases made through commercial portals?

8. Will suppliers to the e-Commerce portals be able to indicate to buyers if their products meet the requirements of the Berry Amendment, Buy America Act, Trade Agreements Act, *etc.*?
 - a. In addition, how will nonstatutory requirements, such as MIL STD 129, for DoD customers be addressed by portal providers?
 - b. How will compliance enforcement be effectuated with respect to portal providers and these statutory and nonstatutory requirements?
 - c. If no plans exist for this compliance enforcement with respect to portal providers, how will compliance be assured?
9. Will GSA confirm that, consistent with the law barring the use of any information related to a product from a third-party supplier featured on the commercial e-Commerce portal or the transaction of such a product, that no point of sale (POS) data will be made available from the commercial e-Commerce portals?
10. If an increase in the MPT to \$25,000 is granted for purchases through the e-Commerce portal(s), what would be the impacts (on agencies, taxpayers and industry) of exempting the requirements identified in Attachment 1 to this letter?
11. GSA has requested authority to use indefinite-delivery indefinite-quantity (IDIQ) contracts to achieve certain efficiencies, without having to negotiate up front pricing with suppliers.
 - a. What would be the impact of this new authority on the Schedules program?
 - b. Will GSA apply the same flexibility and streamlining across all GSA contracts, including the Schedules, as set forth for the e-Commerce portals?
 - i. If so, will it do so in conjunction with the e-Commerce portal pilot to establish data to measure the efficacy of these contracting vehicles?
12. What criteria will GSA use to determine which product categories are used in the pilot and later during “full” implementation?
 - a. Will GSA publish these criteria in advance for public input?
13. Will GSA award a pilot to all interested commercial online marketplace providers representing all “Portal Provider Models” defined in the plan to assure no unfair competitive advantage to any one Portal Provider Model?
 - a. If not, why not, and on what basis will a specific Portal Provider Model be selected?
14. Will the following be measured as part of the pilot, and if not, why not?
 - a. direct and indirect costs, including baseline and post-implementation costs
 - b. potential benefits, and
 - c. unintended consequences for Federal agencies, the industrial base supplying the government, and the U.S. economy
15. What criteria will GSA use to determine if the pilot is a success, and will the evaluation of success include value to customer agencies and compliance with the law?

General Questions

1. Does GSA intend to ask for additional changes to procurement laws and regulations beyond those identified in the Implementation Plan?
2. Will GSA release the underlying analysis used to select \$25,000 as the MPT for purchases made through commercial e-Commerce portals?
 - a. Does GSA's proposal to apply a \$25,000 MPT to purchases made through commercial e-Commerce portals also apply to existing *government* e-Commerce portals, like FedMALL and GSA Advantage? Why or why not?

As GSA conducts its market research during Phase 2 of the Implementation Plan, the Coalition recommends that the Government apply any lessons learned that could be used to streamline procurement processes to all commercial item acquisitions, including pre-existing contracts.

The Coalition appreciates GSA's consideration of industry's questions concerning the implementation of Section 846 of the FY18 NDAA. We look forward to working with GSA as it pursues an e-Commerce portal solution. If you have any questions, feel free to contact me at 202-315-1053 or rwaldron@thecgp.org.

Sincerely,



Roger Waldron
President

Micro-Purchase Thresholds (MPT)

Increase of the micro-purchase thresholds to \$25,000 from \$10,000 (civilian, formerly \$3,500) and \$5,000 (DoD)) mean that certain laws/provisions will not apply to such purchases.

FAR part 8 applies per FAR 13.201(e), but Part 8 does not impose competition requirements for Schedule orders below the MPT and instead only encourages agencies to “distribute” orders among contractors.

Per FAR 13.201(1)(d), there are no required provisions or clauses for micropurchases, except (per FAR 13.202) FAR 52.232-39 - Unenforceability of Unauthorized Obligations) and 32.1110 (financing). So, that means no FAR 52.212-4 and 52.212-5, and thus (among others):

- No Prohibition on Contracting with Inverted Domestic Corporations
- No Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- No Prohibition of Segregated Facilities
- No Equal Opportunity (per FAR 13.201(d) general instruction, although above monetary threshold and thus should be included)

In addition, the following will not apply to such larger purchases:

- No Buy American Act
- No small business preferences or provisions
- No competition requirements
- No OCI clauses or review
- No sole-source justifications