



January 16, 2018

Jeffrey A. Koses
Senior Procurement Executive
Office of Government-wide Policy
General Services Administration
1800 F Street, NW
Washington, D.C. 20405

Subject: Procurement Through Commercial e-Commerce Portals

Dear Jeff,

The Coalition for Government Procurement (“the Coalition”) appreciates the opportunity to provide comments regarding Section 846 of the Fiscal Year (“FY”) 2018 National Defense Authorization Act (“NDAA”) at the public meeting hosted by the General Services Administration and the Office of Federal Procurement Policy (OFPP) on January 9, 2018.

The Coalition is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for a significant percentage of the sales generated through the General Services Administration’s (“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.

Our members applaud the thorough and deliberative approach that GSA is taking to implement the mandates of Section 846. We believe that continued transparency and inclusion of both industry and Government stakeholders in the deliberative process are critical to the adoption of successful e-commerce acquisition solutions. Following up on the public meeting, the Coalition would like to share the following observations with you.

The stakeholder discussion at the public meeting served to highlight several matters:

1. The commercial market for e-Commerce solutions is immense and continues to evolve. In addition to product-centered online portals, there are spot-buying and other solutions open to different systems and types of goods and services. For this reason, it is important that GSA continue to communicate with its industry stakeholders to identify available commercial options and understand the business relationships that support them.

2. A critical step for GSA and its customer base will be to agree upon the government's goals. In the face of distinctly different commercial options available to the government, ranging from new acquisition vehicles that leverage 21st century technology, to an e-commerce platform that facilitates use of existing government contracts. Given the size and diversity of the government's end-user base, agreeing on a set of objectives will be challenging. Still, it is a critical step in the development of an e-commerce acquisition solution that dramatically improves the user's buying experience. Distilling information from current government customers of e-commerce platforms should be an important part of the process.
3. Finally, the meeting crystalized an age-old issue in the acquisition of commercial items: how to balance the unique requirements of the government with industry's need to maintain standard terms and conditions if it is to pass on to the government the benefits of innovative commercial practices and products. In the implementation process, the government will have to determine which policies of government are so critical as to warrant making exceptions to standard commercial terms. So too, depending on the e-commerce solution being considered, the government will have to determine whether there exists a market robust enough to conclude that there truly are "standard" terms and conditions arising from market forces, as opposed to terms and conditions dictated by the solution vendor.

As enacted, Section 846 holds the potential of affecting government procurement significantly for years to come. Whether, the impact of the legislation represents positive change or a destabilizing force, will depend on the care and deliberation exercised by GSA and the Office of Federal Procurement Policy (OFPP) in assessing the business, law, and policy issues at play in this market. Given the breath of issues presented, we urge GSA to use this opportunity to develop a solid implementation plan that guides the Government. A clear statement of goals would be a tremendous first step to leverage the ability of stakeholders to provide feedback and offer alternatives. Considering the significant taxpayer investment involved here, the Coalition recommends that GSA's examination of potential e-commerce solutions consider, at a minimum:

- total direct and indirect costs,
- potential benefits, and
- potential unintended consequences for Federal departments and agencies, the industrial base supplying the government, and the U.S. economy.

In addition, in implementing the pilot prescribed under Section 846, the Coalition recommends that GSA apply the following "strategic principles" when developing future procurements through commercial e-commerce portals:

1. Ensure long-term online marketplace durability and competition by identifying multiple portal vendors/providers and multiple sellers across multiple portal providers.
2. Require the identification and transparency of any fees associated directly or indirectly (e.g., paid by a seller to a portal provider) with a transaction under the pilot.
3. Create a culture of best value in the selection and use of acquisition platforms taking into consideration market-based pricing, differences in terms and conditions, and total costs.
4. Ensure that e-commerce solutions are easy to use, manage, and maintain for both purchasers and sellers.

5. Develop programs that are flexible enough to accommodate rapidly changing technology and divergent customer needs.
6. To the extent that it is advantageous to stakeholders, leverage existing government contracting vehicles to establish business relationships with commercial e-portal providers. This principle would help avoid additional contract duplication and avoid unnecessary confusion in the government's existing supplier base.
7. 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. Without privity of contract, the Government may be delegating inherently governmental functions and lose its ability to ensure compliance with government specific requirements.
8. Set a minimum standard of cyber-security for e-Commerce portals.
9. Establish protocols to bar counterfeit and gray market items to reduce threats to national security.
10. Explicitly state the extent to which the pilot vendor must flow-down necessary government terms and conditions to sellers under its contracts.
11. Provide that ownership of any data directly or indirectly related to a given transaction traversing the portal, whether aggregated or otherwise resides with the Government, not the portal provider. Thus, the portal provider may not use that data for any other purpose than facilitating the immediate transaction.

E-commerce portals offer an exciting alternative for the acquisition of commercial items. Such portal should not be the only method which the government uses to acquire commercial items. Consequently, as GSA and OFPP explore e-commerce alternatives, the Coalition urges that the Government use any lessons learned to streamline and enhance the value of all commercial item acquisitions. To the extent GSA and OFPP determine that certain government specific requirements will be waived or modified for items purchased through the e-Commerce portal, the same waivers or related modifications should be applied to commercial items acquired through existing programs. Further, we urge the Government to minimize redundancy with existing government e-commerce platforms, and increase clarity as to how and when various commercial item vehicles should be used.

The Coalition looks forward to working with GSA to develop an e-commerce solution for Federal customers. If you have any questions, feel free to contact me at 202-315-1051 or rwaldron@thecgp.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Waldron', with a long horizontal flourish extending to the right.

Roger Waldron
President