



December 21, 2018

General Services Administration
Regulatory Secretariat Division (MVCB)
Attn: Dominic Lackey
1800 F Street N.W., 2nd Floor
Washington, D.C. 20405

Subject: Request for Information on the Commercial Platforms Initiative

Dear Mr. Lackey,

Thank you for the opportunity to provide comments in response to the General Services Administration's ("GSA") Request for Information ("RFI") on the Commercial Platforms Initiative published on December 4, 2018.

The Coalition for Government Procurement ("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 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. Coalition 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.

The Coalition appreciates GSA's efforts to execute a thorough and deliberative approach in implementing Section 846 of the Fiscal Year ("FY") 2018 National Defense Authorization Act ("NDAA"). The move to commercial e-Commerce solutions envisioned by Section 846 has the potential to affect billions of dollars across millions of Federal procurement transactions for years to come. Considering the significant taxpayer investment involved, continued transparency and the inclusion of both government and industry stakeholders in the deliberative process will be critical to the adoption of a successful commercial e-commerce solution that is competitive, fair, and transparent.

Following up on GSA's December 12 public meeting, the Coalition recommends that GSA include in its Phase II report:

- A description of the scope of the proof of concept to include, at a minimum, the three e-Commerce models from the March 2018 Implementation plan and an intent to award to each of

these marketplace models—the e-Commerce model, the e-Marketplace model, and the e-Procurement model so that the attributes of each can equally and properly be assessed and to avoid favoring one solution through preselection.

- Specific contractual language describing requirements for the protection of data in accordance with Section 838 of the FY2019 NDAA and Section 846 of the FY2018 NDAA. Again, the statutes require that the provider,
 - *“agree not to use, for pricing, marketing, competitive, or other purposes, any information, including any Government owned data, such as purchasing trends or spending habits, related to a product from a third-party supplier featured on the commercial e-commerce portal or the transaction of such product, except as necessary to comply with the requirements”* of the contract, and that
 - *“the Administrator of the General Services Administration should require any e-commerce portal provider to take the necessary precautions to safeguard data of all other e-commerce portal providers and any third-party suppliers.”*
- An analysis of the impact of the implementation of Section 846 on existing contracts, especially the MAS program and whether GSA and OMB anticipate that the commercial e-Commerce portal could subsume some portions of the program.
- An assessment of any potential fees to be charged by the portal provider for participation in the program is required in accordance with Section 846 of the FY2018 NDAA. In the definition of the e-marketplace model in the Phase I Implementation Plan, GSA states that “profits in this model are mainly derived through commissions on products sold by third-party vendors, supplier-listing fees, service upgrade fees, or a combination of these fees.” It is critical that these fees be assessed due to potential conflicts of interest and the need to ensure that there is a level playing field for vendors of all sizes in accessing the Federal market. Because the definition of the e-marketplace business model in the RFI allows for the portal provider to offer both their own proprietary products and third-party vendors’ products, there is an inherent conflict of interest. The portal provider can set fees for their own products and third-party vendors that they compete with for Federal sales. The Government should also assess the reasonableness of portal provider fees, whether they are variable across vendors, and if there could be any negative impacts on small businesses competing in the Federal market.
- An assessment of, and any data related to, GSA’s consultation with Federal agencies about the supply chain risks of purchasing healthcare products, information technology and software through a commercial e-Commerce platform. Section 846 of the FY2018 NDAA called for such consultation and the RFI does not propose any exclusions for these product categories. The potential risks from a cybersecurity and patient care perspective for veterans and serving military are significant. GSA and OMB should make public their assessment and any data that supports the decision to not exclude these product categories from the proof of concept.

In addition, the Coalition offers the following recommendations in response to the Commercial Platform Initiative RFI. Notably, these recommendations reflect the statutory intent that contracts be awarded to multiple e-Commerce providers. Given that three e-Commerce portal provider models were defined in

the Implementation Plan released in March 2018 (and not in the statute), we recommend that GSA assess, at a minimum, all these models in its proof of concept to avoid the pre-selection of only one of the e-Commerce models for final implementation.

Selection of the “e-Marketplace” Model for Proof of Concept

The RFI proposes the pilot of only one of the portal provider models that GSA identified in its market research, the so-called “e-Marketplace model.” The statute and its associated legislative history, however, clearly demonstrate that Congress’s intent was to allow additional commercial e-Commerce models the opportunity to participate in the Government’s transition to greater use of commercial e-Commerce portals. The Coalition is concerned that, despite Congress’s intent, the RFI documents narrow the focus of the pilot to only one of the three models identified in GSA’s and OMB’s original Implementation Plan. As stated during the Industry Day on December 12, 2018:

“We have seen, we think, a substantial value in the e-marketplace. Our current line of thought is it makes sense to begin the first proof of concept there, but the whole idea is piloting and experimentation and learning from what we see in these.”

The RFI does not include any analysis, data, or rationale as to why the e-marketplace model was selected for the proof of concept, and why the others were not. We are concerned that this apparent pre-selection, and intent to not explore the benefits and challenges associated with other solutions, may put the business interests of agency customers at risk and undermine competition in the federal market.

When the role of commercial e-Commerce solutions was initially contemplated in the Defense Acquisition Streamlining and Transparency Act (“DASTA”), Congress discussed, “online marketplace providers,” which it defined as, “a commercial non-Government entity providing an online portal for the purchase of commercial products.” Specifically, legislators envisioned a dynamic marketplace where information related to price, suppliers, and products would be frequently updated. Further, Congress stated that, “a procurement of a product through a commercial online marketplace” was to “be made under the standard terms and conditions of the marketplace relating to purchasing on the marketplace....”

At the time, industry expressed the concern that:

Although the committee intends for DoD to contract with multiple e-marketplace providers, the language of the bill does not assure that intent is fulfilled. We are concerned that the language could risk establishing an e-marketplace monopoly by an award of just one, single, no-bid contract to an e-marketplace provider. Such a monopoly could disrupt the negotiating position of vendors selling through the e-marketplace with no clear value being returned to DoD. Before waiving foundational elements of the procurement system, like the full and open competition requirements of the Competition

in Contracting Act, we believe that a suitable analog to competition should be established to assure that DoD benefits from the powerful and clarifying forces of the marketplace.

In particular, the Coalition noted that:

“Many e-marketplace providers exist today, and they have established robust, dynamic platforms to serve their customers. In the coming weeks, we hope these vendors will be secured the opportunity to compete and bring value to government customers.”

Later, Congress continued considering the potential opportunities provided by commercial e-marketplaces as part of the FY 2018 NDAA. Beginning as Section 801, the draft legislation discussed procuring, “commercial products through online marketplaces.” This program was to be carried out “through more than one contract with more than one online marketplace provider...” The legislative history to Section 801 discussed online marketplace characteristics for procuring certain commercial off-the-shelf (COTS) products:

“Marketplaces would be limited to those that are commonly used in the private sector [and] provide a dynamic selection of products and prices from numerous suppliers... Online marketplaces primarily provide streamlined and automated access to various suppliers...”

Notably, although Congress still was referencing online marketplaces, we can see Congress’ movement toward channel competition, as reflected further in the report:

“The committee expects that by contracting with numerous marketplaces, there will be competition between marketplaces for procurement of COTS products, and government personnel will have streamlined access to suppliers, products, and prices from varying marketplaces.”

At this point in the legislative process, industry expressed serious concerns about the proposal. In June 2017, the Coalition, along with the Information Technology Alliance for the Public Sector (ITAPS) and the Associated General Contractors of America responded to a request for public feedback on the proposed legislation. Specifically, in a joint letter explaining industry’s concerns with Section 801, these associations stated that:

*The language essentially authorizes the award of a no-bid contract for the e-marketplace, creating the risk of **a monopoly acquisition platform, which ultimately could undermine competition for these items in the government space and distort activity in the commercial space.***

...

*[W]e believe that the potential award of a single, central marketplace platform is not in the government's interest. **There are product- and industry- centric marketplaces manifesting optimized pricing, terms, and conditions that offer products that may not be captured on a single, universal site that offers a wide-range of COTS.***

[Emphasis added.]

Channel competition came to the forefront with the final FY 2018 NDAA e-commerce language, Section 846, which utilized a new, more expansive term for e-commerce. Instead of marketplaces, Section 846 used a broader term to reflect a desire for, “a program to procure commercial products through commercial **e-commerce portals...**” [Emphasis added.] This program was to be carried out, “through multiple contracts with multiple commercial **e-commerce portal providers.**” [Emphasis added.] The statute defined an e-commerce portal as “a commercial **solution** providing for the purchase of commercial products aggregated, distributed, sold, or manufactured **via an online portal.**” [Emphasis added.]

Because of this change, the statutory language no longer limited the government's e-commerce options to a particular channel. The importance of this expansive view is critical. It affords the government the ability to access *multiple* technical solutions to e-commerce. More importantly, however, the language fosters healthy competition between channels and minimizes the potential for one channel/provider to serve as a gatekeeper to the government market, potentially restricting competition and monopolizing the market.

Under these circumstances, the Coalition is very concerned that GSA's proposal to pilot only the e-marketplace model unduly restricts competition for the proof of concept. By not fully exploring the benefits and challenges associated with all commercial solutions, GSA is artificially and unilaterally narrowing the focus of the Section 846 pilot based on its non-statutory categorization of e-Commerce models. Further, this approach places GSA, rather than the market, in the position of determining winners and losers. As a result, GSA could put the business interests of agency customers at risk and undermine competition in the Federal market, two outcomes that Congress clearly did not intend. In sum, by restricting its focus to one type of solution, GSA appears to be circumventing the deliberative approach provided by Congress and signed into law by the President.

In addition, it is not clear why GSA is pursuing an approach that restricts the pilot to a smaller subset of potential suppliers. To date, GSA has not publicly released any analysis, data, or rationale supporting the business case for its approach beyond its aforementioned statement that it sees, “a substantial value in the e-marketplace.” This lack of substantive assessment is particularly troubling when considering the findings of several recent studies, which have confirmed that GSA's current e-Commerce tools already provide lower pricing and faster and cheaper shipping for its customers than the commercial alternatives to which they are compared.

For example, a Naval Post Graduate School study compared a commercial e-commerce channel with purchases from GSA Advantage for the top 60 commercially available items purchased by the Air Force using government purchase cards (GPCs). It found that:

- Prices were lower on GSA Advantage more than 80 percent of the time.
- Although both platforms offered quantity discounts, prices on GSA Advantage were still lower than the commercial alternative after applying the discounts.
- Shipping was both cheaper and faster on GSA Advantage than on the commercial alternative.

In addition, just this month, the Coalition issued a report comparing AbilityOne product prices on GSA Advantage and through the AbilityOne pilot program for commercial e-commerce, established between the AbilityOne Commission and a commercial e-commerce marketplace provider. The report found that:

- Before adjusting prices to account for minimum order requirements, 99.60 percent of AbilityOne products have a lower price on GSA Advantage than on the pilot.
- After adjusting to account for minimum order requirements, 72.31 percent of AbilityOne products have a lower price on GSA Advantage than on the pilot.
- After adjusting for minimum order requirements, prices on GSA Advantage were 55.81 percent lower on average than the prices on the pilot.

Not only does GSA's decision to only evaluate the e-marketplace model in its proof of concept run contrary to the statutory requirements mandated by Section 846, but it also carries with it a high risk for increased costs for agency customers. Based on the foregoing, the Coalition recommends that GSA modify the approach outlined in the current RFI so that the multiple models identified in the Implementation Plan can be appropriately assessed. Doing so will provide more technical solutions available in the commercial market the opportunity to meet the Federal government's e-Commerce needs consistent with Congress's intent.

Establishment of Dual Procurement Systems

Coalition members are concerned about the potential impact associated with the Government's current approach as it relates to the applicability of several government-unique requirements, such as the Trade Agreements Act ("TAA") and the Buy American Act ("BAA"). Specifically, GSA's approach could potentially establish dual procurement systems for commercial items, *e.g.* a pre-existing commercial item contract channel where compliance with government-unique requirements, like the TAA, is mandated (*e.g.*, the MAS program, NASA SEWP, and NIH CIO-CS), and another channel where products from non-TAA countries might be purchased (like China, which is not a TAA designated country).

In the public dialogue to date, GSA and OMB have primarily focused on how greater access to commercial e-Commerce platforms will likely impact the buying experience for Federal customers. However, less attention has been paid to how the establishment of these dual procurement systems will

impact the behaviors of vendors that currently do business with agencies through Federal contracts, like the MAS program. For decades, Schedule contractors have been committed to, and have made significant investments in, providing products to Federal agencies that meet certain compliance requirements, *e.g.*, TAA, BAA, the Berry Amendment, AbilityOne, MIL STD 129. With the development of a new channel to the Federal market with essentially no compliance requirements below the micro-purchase threshold, what is the incentive for contractors to remain with the Schedules program? Indeed, many Schedule holders are reconsidering the value of the program, which has higher costs and greater risks due to the significant compliance requirements compared to this new channel to the Federal market. In addition, Coalition members have indicated that, despite the RFI’s assertion that the Commercial Platforms Initiative will “reduce the burden on the supplier base,” they anticipate that the initiative will increase cost burdens for contractors if they have to participate in both programs. Specifically, upon implementation of the Commercial Platforms Initiative, contractors that currently participate in the Schedules program would need to devote additional resources to the new program, which would increase costs.

It is critical that GSA and OMB assess some of the unintended consequences that may result from the establishment of dual procurement systems for commercial items. Questions that we recommend the Government explore include:

- Why should the TAA apply when a purchase is made through Federal contracts (*e.g.*, the Schedules or NASA SEWP), but not through a GSA-provided commercial e-Commerce portal?
- What will the impact of Section 846 implementation be on existing Federal contracting programs, like the MAS?
- Will the commercial e-Commerce portal(s) likely capture micro-purchases being made today from the open market or from existing Federal contracts?
- What would be the impacts of shifting purchases from products that are largely compliant with existing Federal requirements (like the TAA and AbilityOne) to products that do not have these requirements?

Questions

The Coalition would also like to submit the following comments and questions specific to the RFI documents.

Program Document	Referenced Text	Comment
Cover Letter, pg. 1	“There will be no product catalog limitations”	<p>Given the supply chain risk management issues that could stem from using the portals, why is GSA including IT products in the scope of this portal?</p> <p>GSA stated during the industry day that this program is intended for existing open market</p>

		purchases. Has GSA considered that the program might encourage Government purchase card holders to move away from existing contracting programs (which offer more supply chain protections), ultimately increasing the supply chain risk on the portals?
Cover Letter, pg. 1	"Contracts with the e-marketplace providers will require the contractor to provide GSA with a refund to be used to fund the program."	Will this refund be a basis for the award of the contract?
Cover Letter, pg. 1	"Contracts with the e-marketplace providers will require the contractor to offer discounted prices to government purchase cardholders using a GSA SmartPay purchase card."	How will GSA evaluate the discounts? For instance, will it compare prices on the portals to prices for identical products on other GSA contracts? Will the contract have any penalties for non-compliance with this requirement? Which party is ultimately responsible for offering the discounted prices, the e-marketplace provider or the product supplier?
Cover Letter, pg. 1	"Do the limitations on e-marketplace providers use of data address the concerns of the supplier community?"	How will these limitations be enforced to ensure that the e-marketplace providers comply with the terms and conditions of the contract?
Request for Information, pg. 2	"This includes capabilities such as in-depth product content and product reviews to aid in market research; dynamic pricing and price comparison to ensure competitive pricing"	How is dynamic pricing defined, and how is it measured? Is dynamic pricing a requirement of the contract? How often will vendors be able to update pricing?
Request for Information, pg. 2	"By utilizing these existing capabilities and leveraging business-to-business (B2B) volume pricing and price related terms and conditions (e.g. delivery, warranty, etc.),"	Is volume pricing a requirement of the contract? Are warranties a requirement of the contract? If GSA is requiring these features, how will it compare the features across portals? If GSA is not requiring these features, is it appropriate to argue that optional (or possibly non-existent) features are benefits of the program?
Request for Information, pg. 2	"GSA will be able to reduce the burden on the supplier base while also realizing cost savings to the buyer for the purchase of commercial items."	Has GSA completed a cost-benefit analysis to support this assertion? Is there existing market research that supports this assertion? How is burden on the supplier base being measured? Section 846 is limited to the procurement of COTS items, is GSA expanding the scope of the pilot to commercial items?
Request for Information, pg. 2	"GSA will be able to reduce burden on the supplier base while also realizing cost savings to the buyer for the purchase of commercial items."	What analysis, data, or rationale exists to support this statement? Coalition members foresee the opposite. Costs will increase for vendors who already invest time and money to be a Schedule contractor. Participating in the proposed commercial e-Commerce platform will require an additional investment. Why is GSA asking vendors to participate in another program to sell to

		<p>Federal customers? This approach is duplicative.</p> <p>Members are also concerned about the fees charged by the portal provider which will result in higher prices on the commercial e-Commerce platform compared to what is available today through the Schedules program. To date, two studies by the Naval Post Graduate School and by the Coalition, found lower prices on GSA Advantage compared to the pricing on a popular commercial e-Commerce platform. What is the basis for the statement about cost savings for the buyer? Realistically we do not anticipate that this will be the case.</p>
Request for Information, pg. 2	“This will result in agencies being able to meet mission needs faster and easier, while also ensuring compliance with existing MPT rules.”	GSA should elaborate on this assertion. How will the portals ensure compliance with existing MPT rules?
Request for Information, pg. 2	“Additionally, GSA sees the opportunity to better manage and optimize the workload of the acquisition workforce”	The program documents shift the burden of compliance from portal providers to Government purchasers. How will the compliance shift optimize the workload of the workforce?
Request for Information, pg. 3	“Compliance with data usage restrictions set forth in Section 838 of the FY19 NDAA.”	Section 846(h) of the FY18 NDAA also established restrictions on data usage by the e-commerce provider. GSA should be clear that it intends to comply with both statutes’ provisions on data usage restrictions.
Request for Information, pg. 4	“Including reviews from those who have purchased those items, at both the product level and where possible, the supplier level.”	What actions will GSA take to ensure that purchase card holders are not influenced by fraudulent reviews? What opportunities will suppliers have to respond to inaccurate reviews?
Request for Information, pg. 4	“GSA proposes to direct federal agencies not to post reviews until it resolves associated policy issues.”	What “policy issues” is GSA resolving?
Request for Information, pg. 5	“In support of this, e-marketplace offerings will be open to accepting new suppliers that meet the 3rd party supplier requirements.”	GSA should elaborate on the 3rd party supplier requirements. If the Government does rely on e-marketplace providers to determine requirements, that raises the issue of contractors performing inherently governmental functions. FAR 7.503(c)(12)(v) prohibits all service contractors from administering other contracts, including “accepting or rejecting contractor products or services.”
Request for Information, pg. 5	“To assist in managing supply chain risks, e-marketplace providers will conduct initial due diligence checks to ensure suppliers represent legitimate businesses.”	What is the process for the due diligence checks? How does GSA define legitimate businesses?

Request for Information, pg. 6	"GSA's System for Award Management (SAM) is available for suppliers on the e-marketplaces to register as a small business and other socioeconomic categories.	Who, ultimately, is responsible for validating a business's socioeconomic status?
Request for Information	"ii. Required Data Elements: GSA seeks the proposed data elements to be remitted to GSA by the e-marketplace providers."	Is the new SmartPay program able to provide this data for transactions made with government purchase cards? If so, could the data be provided through SmartPay consistent with the data use restrictions per Section 838 of the FY2019 NDAA and Section 846 of the FY2018 NDAA.
Request for Information, pg. 8	"Filtering should include areas such as product categories, pricing and manufacturer."	Filtering should also include country of origin, since displaying the COO is a requirement of the e-marketplace provider.
Request for Information, pg. 9	"Pricing and Fee Considerations"	<p>The fees charged by the portal provider to vendors are not addressed in this section. Should the additional fees be transparent to agency customers, like Federal contract fees are today?</p> <p>What fees will the portal provider be allowed to charge vendors? Will the same fees apply for all vendors; or, will the fees be variable?</p> <p>Fee transparency is important because there could be underlying conflicts of interest or higher fees charged to some vendors versus others. There are also small business concerns here. Will small businesses with potentially lower volumes of sales be offered the same fees as large vendors that may do significant business in the portal?</p> <p>The government should ensure a level playing field for vendors in any portal provided by GSA to customer agencies. Specifically, the e-marketplace business model that GSA defines on pages 3-4 of the RFI allows for the e-marketplace providers' proprietary products and third-party vendor products. A significant conflict of interest exists where the portal provider is setting fees for their own proprietary products AND third-party vendors that they are in competition with for Federal sales. It is critical that this issue be addressed.</p>
Request for Information, pg. 9	"GSA seeks highly competitive pricing and price related terms and conditions that are on par with the offeror's business-to-business customers."	GSA should also compare the prices to identical items on existing Government contracts.
Request for Information, pg. 9	"The Contractors shall remit a proposed percentage of each transaction back to GSA to fund the program."	Based on the documents, considering GSA's apparently limited role in supporting the platforms, why is the agency imposing an additional fee on top of those that will likely be imposed by the platform providers? Ultimately,

		these fees will be transferred to the Federal customer in the form of higher prices.
Ordering Procedures, pg. 1	“Ordering Official: An authorized ordering official on the e-marketplace platforms.”	How will this be determined? How many Government employees are envisioned to be ordering officials?
Ordering Procedures, pg. 1	“And not prohibited by federal procurement regulations.”	GSA should clarify that this also includes items not prohibited by law as well as regulation.
Ordering Procedures, pg. 3	“Ordering officials may consider a product’s Country of Origin as reported on the e-marketplace platform as a part of their buying criteria.”	The ordering procedures shift the burden of compliance away from the portal provider and onto the Government purchaser. How will GSA ensure compliance with mandatory source regulations (which includes the AbilityOne program) and regulations regarding environmentally-friendly products?
Ordering Procedures, pg. 3	“An ordering official may, but is not required to, review items on more than one e-marketplace platform.”	Ordering officials should be required to review multiple e-marketplace platforms. As the Coalition’s response to GSA’s last RFI pointed out, less than one percent of commercial e-commerce users will review more than one platform when making a purchase. Congress has explicitly required multiple contracts with multiple portal providers. GSA should ensure that ordering officials take advantage of this opportunity to conduct effective market research and maintain a robust competitive environment.
Ordering Procedures, pg. 3	“Ordering officials shall not post product ratings and vendor reviews until GSA determines the appropriate policy and procedures.”	How will GSA ensure that this does not take place?

Thank you for considering the Coalition’s comments in response to the Commercial Platforms Initiative RFI. We look forward to continuing to work with GSA and other stakeholders to develop a “common sense” e-commerce solution for Federal customers. If there are any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,



Roger Waldron
President