



April 28, 2020

Karen Brazell
Principal Executive Director and Chief Acquisition Officer
Office of Acquisition, Logistics, and Construction
U.S. Department of Veterans Affairs
810 Vermont Ave NW
Washington, DC 20571

Dear Karen Brazell:

The Coalition for Government Procurement (Coalition) applauds the U.S. Department of Veterans Affairs (VA) efforts to prevent and treat COVID-19, in what is the largest integrated healthcare system in the country, and your commitment to keeping veterans and VA staff safe and healthy during the national emergency. I am writing on behalf of members concerning the VA announcement on March 20, 2020 that “non-contracted items” may be purchased with a VA charge card from Amazon Business.

As you know, the Coalition is a non-profit association of firms selling commercial services and products to the Federal Government. The Coalition’s Healthcare Committee members provide more than \$12 billion worth of healthcare products/services and pharmaceuticals to support the healthcare needs of our nation’s veterans. Our members include small, medium, and large businesses. We are proud to have worked with Government officials for 40 years towards the mutual goal of common-sense acquisition.

The arrangement in the Amazon Business announcement (Attachment 1) appears to be a single award IDIQ under which VA personnel place orders and Amazon fills orders under certain terms with free two-day shipping on “prime-eligible items” and “access to millions of additional products” available only to Amazon Business customers.

Although the announcement does not mention COVID-19, the Coalition has been informed that the Amazon Business arrangement is intended for the sole purpose of allowing VA purchasers an additional channel for buying personal protective equipment (PPE) during the coronavirus national emergency. Therefore, we are seeking clarification on the purpose of the Amazon Business arrangement, the scope of products available, whether it is a short term solution for COVID-19, how the contract was awarded, how pricing was evaluated, and how compliance with Federal procurement statutes was assessed and will be monitored. Members who provide the VA health system with medical supplies and equipment are also concerned about the risk to patient safety if gray market and counterfeit items enter the VA supply chain.

In addition to the Amazon Business announcement, questions from our members about the use of commercial e-Commerce platforms by Federal agencies are also attached (See Attachment 2).

The Coalition salutes the U.S. Department of Veterans Affairs for its efforts to protect the health and safety of our nation’s veterans and the VA’s healthcare workers during the national emergency. We

sincerely appreciate you for taking the time to consider the questions raised in relation to the March 20, 2020 announcement and we look forward to your response.

Sincerely,

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

Roger Waldron
President

Attachment 1

From: Luce, Chelsea <Chelsea.Luce@va.gov>

Sent: Friday, March 20, 2020 4:56 PM

Subject: VA Announcement of New Purchasing Program with Amazon Business

VA Announcement of New Purchasing Program with Amazon Business

The Department of Veterans Affairs is excited to announce that non-contracted items from Amazon Business may now be purchased with a VA charge card. This new program simplifies your purchasing process and allows you to take advantage of Amazon's wide product selection and competitive prices.

Shopping on Amazon Business is as user friendly as Amazon.com.

Additional benefits include:

- Free 2-Day shipping on Prime-eligible items
- Automatic tax-exempt purchasing on items sold by Amazon.com LLC and participating 3rd-party sellers
- Access to millions of additional products, available only to Amazon Business customers
- Business-specific pricing, including quantity discounts on eligible items
- Access to a specialized Amazon Business Customer Service team

All VA purchase cardholders will be receiving an email from Amazon.com prompting you to set a password for your newly created Amazon Business account. Please set your password by visiting [Amazon's password reset site](#). For account setup questions, please contact Amazon Business Customer Service [online](#) (preferred), or at 888-281-3847.

More information to follow on training and the use of Amazon Business will be provided on Monday.

Please refer any questions to Lori Thomas, Chief, Charge Card Services Division.

Lori Thomas
Chief, Charge Card Services Division
VA A/OPC Level 1
Department of Veterans Affairs
Financial Services Center
Phone 512-460-5189

Attachment 2

Announcement of New Purchasing Program with Amazon Business

Member Questions

In response to the March 20, 2020 announcement of a “New Purchasing Program with Amazon Business,” VA contractors have raised questions and concerns about the award of the e-commerce platform provider, pricing, transactional data, cyber and supply chain security, and the risk of gray market items entering the VA supply chain. The following is a summary of members’ questions about the Amazon Business announcement.

Competition, Fair and Reasonable Pricing, and Transactional Data

The relationship between the VA and Amazon announced on March 20, 2020 appears to be a classic contractual relationship. It promises the performance of a service (product presentation, payment transfer, and delivery) in exchange for the benefit of accessing the VA’s customers for a fee and other value, such as customer identity information, access to VA charge cards, and other transactional data. Under these circumstances, it is unclear how the decision to enter into this contract with Amazon (“the platform provider”) was made. Nor is the breadth of contract scope clear, as the announcement, on the one hand, references the purchase of “non-contracted items,” and, on the other, “access to millions of additional products” purportedly available only to Amazon Business customers. The VA’s press release stating that the VA may procure “millions of additional products” without the protections of a contract is remarkable.

- How was this apparent arrangement, *i.e.*, contract with Amazon competed and awarded?
 - Specifically, what Competition in Contracting Act (“CICA”) process was utilized, and if the award was sole source, on what basis was Amazon selected over other platforms in the marketplace?
 - What is the term of this contract with Amazon?
- Does the March 20, 2020 announcement require purchase card holders to purchase open market items from the platform?
- What process will purchase card holders follow to ensure they are only purchasing open market items from the platform?
- How will the VA manage/ensure the purchases made via the site are for current “non-contracted” items?
- What are the remedies for current VA contractors who are negatively impacted by this new contract, including small and Veteran-owned businesses?
- If the program was put in place for the COVID-19 response, what is the end date for the program?

Also unclear are the specifics of the relationship between the VA and the platform provider. For instance, purchases from the platform will come with an additional “price,” in this case, a transaction fee associated with a purchase. Although, for the VA, the fee charged per transaction may mirror what the company charges for such purchases in the private sector, given the oligopolistic nature of the e-

commerce market, the competitive pressure on that fee is limited. Further, this fee arrangement is not small; rather, it provides Amazon a substantial benefit.

A significant additional benefit that the platform provider would potentially receive from this agreement is access to VA's transactional data from VA government purchase card holders. Unlike under GSA's pending e-Marketplace procurement, where use of transactional data for any purpose other than fulfilling a transaction is barred, it is not clear what, if any, constraints will be placed on the use of transactional data. Thus, the platform provider may be afforded a bounty of government-owned data with ongoing business value to that company, including contact data, credit card information, product preferences, usage rates, and location information. Because the VA has been the most frequent government purchase card user for transactions below the Micro Purchase Threshold (MPT)¹, and has the largest healthcare system in the country, the potential value of the VA's transactional data to a platform provider would be immense and would give that provider a significant competitive advantage against other supply contractors in the market.

- What are the transaction and other fees directly or indirectly associated with purchases from Amazon's e-commerce platform?
 - On what basis did the VA determine these fees to be fair and reasonable?
 - Did VA assess these fees against GSA's industrial funding fee on the Schedules, which is .75%? If so, what was the difference?
 - Has the anticipated VA benefit of this contract been evaluated against these fees to assess whether the awardee is receiving a windfall at government expense?
- Are there any limits on the use of transactional data associated with purchases under the platform provider's contract?
- What consideration was paid by Amazon for access to and/or use of the government's transactional data here?

Related to the fees issue is product pricing. The inflated pricing associated with "commercial" e-commerce platforms has been well documented. For instance, [multiple studies](#) [have](#) demonstrated that, product for product, GSA's existing online Schedules prices are lower than commercial e-commerce platform prices. There is no evidence that the selection of Amazon's e-commerce platform will yield pricing superior to purchasing options already available to the VA.

- In making the decision to utilize Amazon's e-commerce platform, what pricing analysis was performed?
 - Were discounts obtained, and, if so, how were they derived?
 - If obtained, were discounts predicated on any assessment of volume? If so, and the VA assumed large volumes, those should be under contract. If the VA assumed small volumes, there appears to be no basis for this arrangement.
- How will price gouging be monitored and prevented for purchases made on the platform during the COVID-19 national response, especially for PPE?

Counterfeit Products

¹ GAO, Governmentwide Purchase Cards: Opportunities Exist to Leverage Buying Power, GAO-16-526 (Washington, DC: May 19, 2016).

[Executive Order 13904](#), “Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders” (E.O.), addresses the Administration’s concerns about counterfeit trafficking on e-commerce platforms. Dr. Peter Navarro, Assistant to the President, noted that these platforms play by a set of rules different from those that other businesses must follow. Likewise, [hearings](#) before the Subcommittee on Consumer Protection and Commerce of the House Energy and Commerce Committee highlighted the risk to public health and safety associated with the fake products, certifications, and reviews, along with the challenges associated with the vetting of sellers associated with these platforms and the adequacy of platform provider accountability.

- How would the VA hold the platform provider accountable for assuring that counterfeit and/or gray market products are not offered for sale on its e-commerce platform, especially healthcare products offered by unauthorized distributors, that may risk patient safety?
- In this regard, how would the VA address the President’s Executive Order EO 13904?

For the Department of Veterans Affairs, the purchase of fake and/or gray market products through an e-Commerce platform presents real risks to patient safety at VA medical facilities. Unfortunately, unless healthcare products are excluded from the Business platform, these risks exist whether or not the purchases made are below the MPT. Coalition members are concerned that gray market items provided by unauthorized distributors may be readily available on the e-Commerce platform and that these products may not be easily identified by VA purchase card holders. Because these products are not provided by authorized distributors, there is no guarantee that these products are new, meet quality standards, or are not refurbished or reused. Further, there is no assurance that these products have been stored or delivered in accordance with manufacturers’ requirements (*e.g.*, at the appropriate temperature), which can also lead to patient risk. For these reasons, the Coalition is concerned about high volumes of medical supply purchases being made, especially in response to the COVID-19 national emergency, through a commercial e-Commerce platform where products are not properly vetted.

Cyber and Supply Chain Security

Section 889 of the John S. McCain National Defense Authorization Act for fiscal 2019 was enacted to restrict the use of telecommunications products and services, along with surveillance video technology, from certain Chinese companies (*e.g.* Huawei and ZTE). Section 889(a)(1)(A) was implemented thru an interim rule issued last August and required representations by contractors concerning the presence of aforementioned technology and services in solutions being provided to the government. Section 889(a)(1)(B), for which, implementing regulations are pending, will restrict the government from contracting with an entity that uses such equipment or services from a restricted source, or a system that uses such equipment or services from a restricted source. We have yet to understand how other e-commerce platforms, like GSA’s commercial e-Marketplace, will be managed under this regime, and that lack of understanding extends to the VA’s Amazon platform.

- How will the VA hold the platform provider accountable for compliance with the Section 889 prohibition mentioned above?
- What steps will the provider take to bar noncompliant products from the platform provided to the VA?

- Many government purchase card holders believe they are not allowed to purchase items online or have their card information stored online. Will the VA provide guidance to its purchase card holders clearly stating that they are permitted to purchase items on-line?

Compliance

We understand that the Amazon contract may be limited to below-Micro Purchase Threshold (MPT) purchases. Facilitated by the government's use of purchase cards, purchases below the MPT are streamlined, allowing certain small purchases to be made without regard to compliance with the Trade Agreements Act (TAA), the Buy American Act (BAA), and socio-economic laws. Thus, the VA contract with Amazon appears to be grounded in non-compliance with the law. Moreover, as agencies exercise emergency acquisition authorities in response to the COVID-19 virus by elevating the MPT threshold, the concerns with non-compliance are substantially exacerbated.

- Given that the dollar value of products flowing through this contract will exceed the threshold for the application of the TAA, would the VA hold the platform provider accountable for compliance with the TAA?
 - Alternatively, given the Administration's concerns about counterfeit products and cyber and supply chain security, will the VA require the platform provider to offer only TAA-compliant products on its platform?
- Will the VA require "country of origin" information from Amazon for all products traversing its network?
 - How will the VA hold the platform provider accountable for barring items made in China from its platform?
- How is the VA addressing mandatory sources like AbilityOne and other socio-economic preferences on the platform?