



**REQUEST FOR PROPOSAL (RFP)
47QSCC20R0001
Commercial e-Marketplace Acquisition**

QUESTIONS

1. Cover Letter

Questions on the solicitation are due October 15, 2019 and solicitation responses due November 1, 2019. There are 12 business days between the submission of questions and the due date for offerors to respond to the solicitation. In order to ensure that interested offerors have enough time to review GSA's answers and modify their solicitation responses accordingly, would GSA consider extending the solicitation response date 30 days to December 1, 2019? This would provide a more realistic timeframe for industry to respond to this critical procurement and maximize competition in response to GSA's Commercial Platform Initiative (CPI) requirements.

2. RFP, Page 3, Paragraph Bb.1 Schedule of Supplies/Services - Continued:

Comment/Question: As contemplated by the RFP and consistent with commercial practice, the government will be paying the purchase price for products sold by 3rd party suppliers. These product prices typically include the transaction fee charged by an e-market provider (commonly 15% per transaction). Therefore, since the customer agencies ultimately will be paying these fees via the product purchase price, will GSA be evaluating these fees for award purposes and otherwise assessing the reasonableness of the transaction fees/costs to the government? Currently, it appears the RFP does not contemplate such an evaluation. However, an evaluation of these fees would serve to protect the customer agencies and the government's interest (the public fisc). It would also provide a basis to assessing the fee impact (barriers to entry) on 3rd party suppliers, especially small businesses.

3. RFP, Page 3, Paragraph B.1:

Question: Given the potential transaction fee structure, including GSA's fee, please share with stakeholders across the procurement community, the rationale/analysis supporting the "no-cost" contract type?

4. RFP, Page 8, FAR 52.212-4(h) Order of Precedence:

Comment/Question: Please address the interplay between the paragraph (h) and the language at Attachment 3, Statement of Objectives, Paragraph B.(ii), which states that "E-marketplace platform providers reserve the right to manage the rules governing the on-boarding of new suppliers in accordance with their commercial practices." What if the commercial practices/rules conflict with the underlying contract? Which controls?

5. RFP, Page 23, Paragraph E.3.5.2.1, Volume 1 - Contract Data, Organizational Conflict of Interest Disclosure:

Comment/Question: FAR 9.504 directs contracting officers to analyze planned acquisitions in order to identify and evaluate OCIs as early in the acquisition process as possible, and to avoid, mitigate significant potential conflicts before contract award. GSA's definition of e-marketplace highlights a significant OCI – that an e-marketplace provider can sell its own products on its site while also setting the terms of entry (including fees and allocation of risk) for third party suppliers selling on the provider's site. The e-marketplace provider competes against third party suppliers under rules that it has set up. The RFP doubles down on this conflict providing that "E-marketplace platform providers reserve the right to manage the rules governing the on-boarding of new suppliers in accordance with its commercial practices." This structure raises troubling concerns regarding impaired objectivity and biased ground rules under the RFP. (The unequal access to information conflict was addressed by the statutory restrictions on the e-marketplace provider's use of the third-party supplier transactional data.) Will GSA mitigate the impaired objectivity and biased ground rules OCIs? Will GSA publish any mitigation strategy/approach that is developed?

6. Statement of Objectives, Page 13, C.(iii), Data Analytics

Under the SOO, C.(iii)(4), the e-marketplace platform provider must provide dashboard capabilities to include, for management purposes, what cost savings were achieved (assuming any were achieved) versus commercial prices and versus Multiple Award Schedule prices. This language creates another OCI, as

an e-marketplace provider is positioned to evaluate its own program performance relative to other competing buying channels. The conflict here is significant given the fact that multiple studies already have demonstrated the high-cost of e-marketplace solutions when compared to GSA Advantage. Moreover, there is no methodology here to assure like-for-like analysis. For instance, it is not clear how the intended saving analysis will account for the fact that the GSA Advantage products must be TAA compliant while e-marketplace products are not required to be TAA compliant.

- a. Will GSA eliminate the impaired objectivity and bias OCI here by assigning the savings analysis to an independent third-party entity?
- b. Will GSA set forth a methodology for the savings analysis that accounts for the different requirements of the buying channels being studied to assure a like-for-like analysis?
- c. Will GSA publish any study and mitigation strategy/approach that is developed?

7. Statement of Objectives, Page 8, (4)B(ii), Supply Chain Risk Management and 3rd Party Supplier Management

Notwithstanding language that appropriately would place accountability with the e-marketplace provider to assure that what is being offered to agency buyers complies with the law (something already being done on GSA Advantage), the SOO (Attachment 3, (4)B.(ii)) raises ambiguity around that accountability, stating that, "E-marketplace platform providers reserve the right to manage the rules governing the on-boarding of new suppliers in accordance with their commercial practices."

- a. What does the language quoted above mean?
 - i. Does the language vitiate any of the other language in (4)B.(ii)?
 - ii. Does the language permit an e-marketplace provider to impose price parity provisions on third-party suppliers?
 - iii. Does the language permit an e-marketplace provider to charge a fee to third-party suppliers for different levels of search result placement or other types of "pay for play" provisions?
- b. Will the e-marketplace portal provider be responsible for assuring the all products available for purchase on its site are:
 - i. Permitted to be there under the law?
 - ii. Otherwise comply with the law, *e.g.*, are not counterfeit, do not violate the intellectual property rights of any other entity, and are provided from a legitimate source?

- c. Section 846(c)(2)(E) requires the Government to submit to Congress a “review of standard terms and conditions of commercial e-commerce portals in the context of Government requirements.”
 - i. Has that review been conducted, and if so, will it be released?
 - ii. Is the language quoted above included in the SOO as a result of the review pursuant to Section 846(c)(2)(E)?
 - 1. If so, why?

8. Statement of Objectives, Page 1, Section 3 “Scope” contains the following language:

“Lastly, the Government will not allow offerors who only offer products in the Information Technology and Medical categories (even though this represents more than one government-wide category), given the heightened supply chain concerns.”

As industry has pointed out to GSA repeatedly – and as the authorizing Section 846 legislation made clear – information technology (IT) products, in particular commercial off the shelf (COTS) items, clearly carry additional supply chain risk for the federal government. The Inspector General at the Department of Defense recently released an audit of that found that DOD purchased, through government purchase cards nearly \$33 million in COTS IT items with known cyber security risks.

Given GSA’s recognition of the “heightened supply chain concerns” as it relates to IT products, does the forgoing language mean that IT products such as software are specifically excluded from this RFP, or that such products are allowed as long as they are carried by Offerors who offer “a wide array of products across multiple categories?”