



April 25, 2018

Mr. Eric Mellinger
Professional Staff Member
Committee on Armed Services
U.S. House of Representatives
2216 Rayburn House Office Building
Washington, D.C. 20515

Subject: Request for Public Comment on Draft Acquisition Reform Legislation

Dear Mr. Mellinger,

I am writing on behalf of members of the Coalition for Government Procurement (“the Coalition”) regarding Chairman Thornberry’s request for public comments related to the draft legislation, *Accelerating the Pace of Acquisitions Reform Act of 2018*, in particular, Section 302, which proposes modifications to the procurement through commercial e-Commerce portals provisions of the Fiscal Year (“FY”) 2018 National Defense Authorization Act (“NDAA”).

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 also are responsible for many of the commercial item solutions purchased annually by the Federal Government, and they 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 the opportunity to provide input on the draft legislation in response to the Chairman’s public request for comments. We believe that continued transparency and the inclusion of both industry and Government stakeholders in the deliberative process are critical to the adoption of successful e-Commerce acquisition solutions. Although the Coalition shares the goal of bringing efficiency to, and enhancing the value of, the commercial item acquisition process, it remains concerned that some of the proposed changes contained in the discussion draft are premature and require further vetting among stakeholders.

As currently set forth, the discussion draft appears to limit the Executive Branch and stakeholder vetting process put in place by Congress over the last year with the enactment of Section 846 of the FY 2018

NDAA. Without this vetting, the authorization of GSA to define competition through commercial e-Commerce portals, for instance, risks generating unnecessary confusion in this process. In sum, more discussion is needed to understand the discussion draft proposal.

Further, the proposed authorization of an increase in the Micro-Purchase Threshold (“MPT”) to \$25,000 lacks a supporting rationale to justify this change, especially considering that the most recent increase in the MPT authorized by Congress has yet to be implemented and any unintended consequences fully understood. Moreover, the implementation of Section 846 set forth in GSA’s *Procurement Through Commercial E-Commerce Portals Implementation Plan*, which included the aforementioned MPT increase, was not publicly addressed with industry prior to that plan’s publication; nor was industry provided the opportunity to submit public comments on the Legislative Recommendations that were made to Congress.

Considering the significant taxpayer investment involved here, as well as the potential impact on Government systems and programs, the Coalition asks that you consider at a minimum:

- **Purchases made below the MPT are not subject to a series of government requirements.** Thus, with the proposal to increase the MPT to \$25,000, it would be helpful to understand specifically which of these requirements the Committee wishes to eliminate and why, including, but not limited to:
 - The Buy American Act (“BAA”)
 - The Trade Agreements Act (“TAA”)
 - Small Business Programs, including, but not limited to:
 - 8(a) Business Development Program
 - Women-Owned Small Business (“WOSB”) Program
 - Service-Disabled Veteran-Owned Small Business (“SDVOSB”) Program
 - Historically Underutilized Business Zone (“HUBZone”) Program

Understanding the rationale for the exemption of these requirements for purchases below the MPT would be especially helpful given Congress’ longstanding commitment to Federal procurement preferences for the purchase of products that are made in America and/or TAA designated countries, and that support small businesses.

- **The proposed increase of the MPT to \$25,000 for purchases made through the e-Commerce platforms.** Does the proposal strike the appropriate balance between streamlining and necessary government requirements, including the need to avoid counterfeit products, reduce cybersecurity risk, and protect intellectual property? Further, assuming that the increase in the MPT will only be for purchases pursuant to Section 846 portals, will the result lead to “parallel universes” of commercial item purchasing through e-Commerce platforms and through other Federal contract vehicles, and if so, what will be the impact of those parallel universes, *i.e.* what is the impact of the draft discussion’s MPT increase for pre-existing contract programs?

- **The lack of a cost/benefit, or other similar analysis justifying an increase in the MPT to \$25,000.** The proposal would more than double the previous \$10,000 MPT prescribed by Congress, which has yet to be fully implemented. Before implementing an increase in the MPT that could dramatically shift purchasing behaviors in the Federal procurement process government-wide, the government should study the value, tradeoffs, and implications of such an increase, including the impact of potentially waiving certain government requirements (*e.g.*, TAA, BAA, and small business programs) and, separately, the impact on AbilityOne purchases and disabilities employment.
- **Responsibility for the determination and oversight of the discussion draft’s amendment to Section 846 pertaining to full and open competition requirements.** Specifically, how will the determination of same vs. similar vs. “substantially the same” products be made to ensure that full and open competition requirements are met, and by what party? In addition, how will this determination be monitored for compliance?
- **The interplay between Section 846 and the proposed definition of commercial products and services in Section 201 of the discussion draft, which eliminates the commercial off-the-shelf (“COTS”) items definition.** Section 846 was limited in effect to non-services COTS items. With the proposed elimination of COTS items, the implementation of Section 846 includes reach into a broad spectrum of commercial products with a commensurate increase in concerns about cybersecurity, counterfeit products, and intellectual property protection. What analysis and data exist to justify the proposed expansion into this realm; what mechanisms are in place to protect Government and vendor interests; and what compliance obligations will be imposed on e-Commerce portal providers to protect those interests?

The Coalition supports the efforts of Chairman Thornberry and the Committee to bring improvements to DoD’s processes and support DoD’s mission to safeguard our nation. It also appreciates the outreach to industry. If you would like to discuss this matter, or if you have any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,



Roger Waldron
President