



March 2, 2018

Phillip Christy
Associate Executive Director
U.S. Department of Veterans Affairs
Strategic Acquisition Center
10300 Spotsylvania Ave STE 400
Fredericksburg VA 22408

Subject: Online Marketplace for Micro-Purchases

Dear Phil,

The Coalition for Government Procurement (“the Coalition”) appreciates the opportunity to provide comments in response to the “Online Marketplace for Micro-Purchases” RFI, especially concerning potential access to online marketplaces by micro-purchase buyers at the Department of Veterans Affairs (VA).

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 General Services Administration’s (“GSA”) and VA contracts, including the Federal Supply Schedule (“FSS”) program. The Coalition’s Healthcare Committee provides more than \$12 billion worth of pharmaceuticals and medical/surgical products to support healthcare needs of our nation’s war-fighters and veterans. Our members include small, medium, and large business concerns. We are proud to have worked with Government officials for more than 35 years towards the mutual goal of common sense acquisition.

The Coalition supports the Strategic Acquisition Center’s efforts to identify ways to improve the efficiency and effectiveness of the procurement process at the VA. At the same time, we encourage the VA to participate in the government-wide initiative, currently led by the Office of Federal Procurement Policy (OFPP) and GSA, to establish a program for Federal agencies to procure commercial products through commercial eCommerce portals in accordance with Section 846 of the FY18 National Defense Authorization Act (NDAA).

Given the unique needs and requirements of Federal agencies, our members have encouraged the Government to adopt the following “strategic principles” as it explores how to best utilize commercial eCommerce portals for the purchase of commercial items.

Strategic Principles for the Assessment of eCommerce Portals

1. When examining 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.
2. Ensure long-term online marketplace durability and competition by identifying multiple portal vendors/providers and multiple sellers across multiple portal providers.
3. 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.
4. 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.
5. Ensure that e-commerce solutions are easy to use, manage, and maintain for both purchasers and sellers.
6. Develop programs that are flexible enough to accommodate rapidly changing technology and divergent customer needs.
7. 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.
8. 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.
9. Set a minimum standard of cyber-security for e-Commerce portals.
10. Establish protocols to bar counterfeit and grey market items to protect veteran patient safety.
11. Explicitly state the extent to which the pilot vendor must flow-down necessary government terms and conditions to sellers under its contracts.
12. 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.
13. To the extent that certain government specific requirements are waived or modified for items purchased through e-Commerce portals, the same waivers or related modifications should be applied to commercial items acquired through existing programs.

Streamlining Effects of Changes to the Micro-purchase and Simplified Acquisition Thresholds

In addition to establishing a government-wide eCommerce portal program through Section 846, the FY18 NDAA raised the micro-purchase threshold (MPT) for civilian agencies to \$10,000 and raised the

simplified acquisition threshold (SAT) for all agencies to \$250,000. Increases to the MPT and the SAT will have an immediate and significant impact in streamlining acquisition operations and supporting agency mission needs. For the VA, the increase in the MPT and the SAT impacts open market purchases, and also increases the flexibility to place orders under pre-existing contract vehicles like the VA Federal Supply Schedule (FSS), the Medical/Surgical Prime Vendor (MSPV) program and other VA contract vehicles.

There is great value in this contract ordering flexibility compared to open market transactions below the MPT—namely, the products, services, and firms on pre-existing contracts have been vetted for compliance with important government requirements like the Trade Agreements Act, Buy American Act, cybersecurity requirements, small business goals, AbilityOne, etc. In addition, the prices on these VA contracts are the result of full and open competition and/or have been determined to be fair and reasonable while remaining under competitive pressure at the task and delivery order.

The Coalition recommends that the VA also consider the streamlining impacts of the increases to the MPT and SAT on existing VA contracts, like the FSS, as it evaluates the benefits, total and indirect costs, and potential unintended consequences associated with the use of eCommerce platforms.

Clarification of Scope/Role

As the VA explores the use of eCommerce platforms as an additional purchasing channel, the Coalition recommends that the VA consider the role and scope of the platform from a strategic perspective. The VA should identify the appropriate role and scope of the program compared to other contracting programs like the FSS, which provides the VA with products, services and suppliers already vetted for compliance with government requirements. Should the VA adopt an eCommerce platform for micro-purchases, the VA must be prepared to provide sellers with an explanation of the distinctions between its existing contract programs, the differences in their terms and conditions (if any) and outline a clear transition plan.

Opportunity to Leverage Existing Contracts

There is also an opportunity for the VA to leverage its existing contracts as part of the online marketplace. For example, FSS items and associated pricing could be made available through the eCommerce platform, thereby allowing the VA to better track sales and reducing open market purchase card transactions.

eCommerce Pilots

Central to the implementation of Section 846 of the FY18 NDAA is the development of an eCommerce pilot. With respect to the development of any eCommerce pilot between a Federal agency and a platform provider for services to facilitate micro-purchases, these understandings/agreements should be considered contracts. Such pilots should also avoid “pre-selecting” vendors thereby restricting competition over the long term, with potential negative consequences for the agency and the competitive Federal market.

Questions

The prospect of the VA using a commercial eCommerce platform to purchase commercial items below the micro-purchase threshold generated a number of questions that the Coalition would like to share with the VA for its consideration.

Product Integrity

1. How will “grey market” concerns be addressed to ensure product integrity throughout the supply chain? Will the platform vendor be responsible for addressing grey market issues, or will that fall to individual manufacturers? How will these matters be handled for product integrity throughout the supply chain?
2. Will the online marketplace provide chronological documentation or a paper trail recording sequence of custody, control, transfer, analysis and disposition of physical and electronic evidence?
3. How will product/customer reviews be addressed with respect to potential adverse reporting?

Role of Manufacturers

4. Is the VA collecting only user agreement terms from customer facing vendors with eCommerce platforms? Or will it consider common or standard downstream commercial terms? (Disparities between commercial terms typically used by the different groups could create negotiation and operational gaps during implementation.)

Pricing and Contractual Considerations

5. How will the VA ensure that pricing is analyzed consistently, and will it use market-based pricing as a standard?
6. Who would negotiate pricing with manufacturers/vendors, the VA or the online marketplace company? Or, would FSS pricing apply to online marketplace sales? Lastly, would manufacturer/vendor pricing (which some may view as proprietary) be able to be viewed by other manufacturers/vendors or only by VA facilities?
7. How will the VA address the following operational and contractual issues?
 - a. Functionality to load contract pricing and supply sales tracing given the volume of products, customers, and potential for an intermediary access point
 - b. Warranty and indemnification concerns: these terms often differ by manufacturer (and even by product). How will the pricing impact of these intangibles be considered?
 - c. How will the VA deal with concerns with fees and penalties often associated with online marketplaces (and the pricing impact associated therewith)?
 - d. Backorders require order cancellation and then reissue to avoid fee. This can be a manual process for manufacturers to scale is an issue.
 - e. Sales tracings for any procurement are critical with medical products, whether medical devices or pharmaceuticals. Some online marketplaces are reluctant to provide those to manufacturers, which is a patient safety concern and medical device manufacturer concern.

Conclusion

Again, given OFPP and GSA's current government-wide initiative to research and establish a program for Federal agencies to procure commercial items through commercial eCommerce portals, we recommend that the VA participate in this important initiative. This effort provides a significant opportunity for the Government to develop a common-sense approach to online purchasing through commercial eCommerce platforms.

We appreciate the VA for its outreach to industry through the Online Marketplace RFI. 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 'RWaldron', with a long horizontal flourish extending to the right.

Roger Waldron
President