



January 17, 2018

MEMORANDUM FOR MATTHEW MCFARLAND
PROCUREMENT ANALYST
OFFICE OF GOVERNMENT-WIDE POLICY

FROM: LOIS MANDELL
DIVISION DIRECTOR
REGULATORY SECRETARIAT DIVISION
OFFICE OF GOVERNMENT-WIDE ACQUISITION POLICY

SUBJECT: Notice MV-2017-05; Procurements Through Commercial e-Commerce Portals

Attached are comments received on the subject MV notice published at 82 FR 59619, on December 15, 2017. The comment period closed on January 16, 2017. Eighty-two comments were received.

<u>Response Number</u>	<u>Date Received</u>	<u>Commenter</u>	<u>Organization</u>
MV-2017-05-1	12/21/2017	Deanna Dockman	Beacon Lighthouse for the Blind
MV-2017-05-2	12/25/2017	James Kerlin	Beyond Vision
MV-2017-05-3	12/26/2017	Allen Platt	Lighthouse for the Blind
MV-2017-05-4	12/27/2017	Erika Petach	B&V Rehabilitation
MV-2017-05-5	12/27/2017	Michael Chew	Miss. Industries for the Blind
MV-2017-05-6	12/28/2017	Michael Monteferrante	Envision
MV-2017-05-7	12/29/2017	Reinhard Mabry	Alphapointe
MV-2017-05-8	12/29/2017	Rob Buettner	Beyond Vision
MV-2017-05-9	12/30/2017	Todd Tiahrt	NAEPB

MV-2017-05-10	01/02/2018	Jeff Broz	Clovernook Center for the Blind
MV-2017-05-11	01/02/2018	David Horton	IFB Solutions
MV-2017-05-12	01/03/2018	Dennis Lonney	NewView Oklahoma, Inc.
MV-2017-05-13	01/03/2018	M. Bullard-Marshall	Not Identified
MV-2017-05-14	01/04/2018	Mike Gilliam	San Antonio Lighthouse for the Blind
MV-2017-05-15	01/05/2018	David Huffman	Texas Lighthouse for the Blind
MV-2017-05-16	01/05/2018	Lou Moneymaker	Bosma Enterprise
MV-2017-05-17	01/05/2018	Dirk Van Dongen	Nat. Assoc. of Wholesaler- Distributors
MV-2017-05-18	01/05/2018	Renee Vidrine	Lighthouse for the Blind New Orleans
MV-2017-05-19	01/05/2018	Lauren Branch	New View Okla.
MV-2017-05-20	01/05/2018	C.J. Lange	Industries for the Blind in Milwaukee
MV-2017-05-21	01/05/2018	Robert Garrett	North Central Sight Services
MV-2017-05-22	01/05/2018	Rudy D'Amico	CABVI
MV-2017-05-23	01/05/2018	David Toogood	Not Identified
MV-2017-05-24	01/08/2018	Richard Oliver	Industries of the Blind in Greensboro
MV-2017-05-25	01/08/2018	Jeffrey Hawting	LC Industries
MV-2017-05-26	01/08/2018	Matt Koch	Virginia Industries for the Blind
MV-2017-05-27	01/08/2018	A.G. Hopf	Assoc. for the Blind & Visually Impaired

MV-2017-05-28	01/08/2018	Frederick Puente	Blind Indus. & Services of MD
MV-2017-05-29	01/08/2018	Misty Stenberg	MidWest Enterprise for the Blind
MV-2017-05-30	01/08/2018	Joshua Gould	Industries of the Blind Greensboro
MV-2017-05-31	01/09/2018	Linda O'Neill	Health Industry Distributors Assoc.
MV-2017-05-32	01/09/2018	Richard Monaco	Arizona Industries for the Blind
MV-2017-05-33	01/09/2018	John Mitchell	Cin. Assoc. for the Blind & Visually Impaired
MV-2017-05-34	01/10/2018	Timothy Voit	Not Identified
MV-2017-05-35	01/11/2018	Janet Griffey	RLCB, Inc.
MV-2017-05-36	01/12/2018	David Pump	Not Identified
MV-2017-05-37	01/12/2018	Dan Carrell	IBM
MV-2017-05-38	01/12/2018	Willa Adams	Not Identified
MV-2017-05-39	01/12/2018	Cathy West	Alabama Industries for the Blind
MV-2017-05-40	01/13/2018	Jack Young	Black Hills Services
MV-2017-05-41	01/15/2018	Lori Kain	Not Identified
MV-2017-05-42	01/15/2018	Craig Levin	Vocational Services Black Hills
MV-2017-05-43	01/15/2018	Brad Saathoff	Black Hills Services
MV-2017-05-44	01/15/2018	Stephen Sachs	Nat. Industries for the Blind
MV-2017-05-45	01/15/2018	Libby Murphy	LA Association for the Blind
MV-2017-05-46	01/15/2018	Ken Fernald	AVRE

MV-2017-05-47	01/15/2018	Bill Brown	Not Identified
MV-2017-05-48	01/16/2018	Jay Burrell	Not Identified
MV-2017-05-49	01/16/2018	Pat Zaccario	Not Identified
MV-2017-05-50	01/16/2018	Paul Cantwell	Not Identified
MV-2017-05-51	01/16/2018	Ann Graff	Not Identified
MV-2017-05-52	01/16/2018	Chris Alsup	Dell EMC
MV-2017-05-53	01/16/2018	Denis Dwyer	GovEvolve
MV-2017-05-54	01/16/2018	David Grogan	Amer. Booksellers Assoc.
MV-2017-05-55	01/16/2018	Diane Lazzaris	WESCO Int., Inc.
MV-2017-05-56	01/16/2018	Chol Pak	Thermo Fisher
MV-2017-05-57	01/16/2018	Tagata Hagat	Not Identified
MV-2017-05-58	01/16/2018	Brad Wiens	Lighthouse for the Blind in Seattle
MV-2017-05-59	01/16/2018	Andrew Malay	Coupa
MV-2017-05-60	01/16/2018	Nicky Ooi	Lighthouse for the Blind South Texas
MV-2017-05-61	01/16/2018	Michael Hettinger	FedBid, Inc.
MV-2017-05-62	01/16/2018	Kevin Lynch	National Industries for the Blind
MV-2017-05-63	01/16/2018	Bob Dunn	Juniper Networks
MV-2017-05-64	01/16/2018	Jaime Mautz	Pacific Ink
MV-2017-05-65	01/16/2018	Steve Soroka	Source America
MV-2017-05-66	01/16/2018	Stephanie Lambert	Staples, Inc.
MV-2017-05-67	01/16/2018	Gregory Jaeger	Advanced Technology Int.
MV-2017-05-68	01/16/2018	Bob Michels	Ecolab

MV-2017-05-69	01/16/2018	Roberto Montanez	Parachute Industry Association
MV-2017-05-70	01/16/2018	Justin Miller	WVR Int., LLC
MV-2017-05-71	01/16/2018	Mike Tucker	IOPFDA
MV-2017-05-72	01/16/2018	Roger Waldron	Coalition for Govt. Procurement
MV-2017-05-73	01/16/2018	Brock Lyle	Overstock.com, Inc.
MV-2017-05-74	01/16/2018	Eminence Griffin	ITAPS
MV-2017-05-75	01/16/2018	Steve Lamar	Amer. Apparel & Footwear Assoc.
MV-2017-05-76	01/16/2018	Kathryn Edelman	Amazon
MV-2017-05-77	01/16/2018	Jeffrey Ellinport	immixGroup
MV-2017-05-78	01/16/2018	John Sebastian	3M Corp.
MV-2017-05-79	01/16/2018	Jeffrey Bozman	Covington & Burling
MV-2017-05-80	01/16/2018	Anonymous	UL, LLC.
MV-2017-05-81	01/16/2018	Jennifer Safavian	Retail Industries Leaders Assoc.
MV-2017-05-82	01/16/2018	Brian Hoey	CPPBSD

Attachments

PUBLIC SUBMISSION

As of: 12/28/17 10:54 AM**Received:** December 21, 2017**Status:** Draft**Tracking No.** 1k1-90h7-9c3m**Comments Due:** January 16, 2018**Submission Type:** Web**Docket:** GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0709

Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

See attached file(s)

Thank you for this opportunity to express our ideas and concerns regarding this issue and braking it down into the three focus areas.

Under the Program Design it is essential that we safeguard the current laws and programs that are in place. The Javits Wagner O'Day Act and the AbilityOne Program are essential components to the Federal Program and to the Blind and Legally Blind within our great Country. They work hand in hand and it is a major element to the successful employment of blind and visually impaired individuals.

A single portal provider for a product category would be successful in addition, distribution depots could be designated that could correspond to that product category. One agency should be overseeing this thus allowing it to run like a well oiled machine and ensuring that all laws are being enforced, thus ensuring 100% compliance. In addition, we need to take the essential steps to reinsure that unintended consequences of harm does not come to current laws or programs, such as the Javits Wagner O'Day and the AbilityOne Program that helps employ the blind and visual impaired.

This is a large category of individuals within our great country which is projected to dramatically increase as exemplified by the National Eye Institute and we can not allow them to be hurt by this process. I have attached such documentation hereto.

The Buying Practices should be base on the fair market price which should be determined by an appointed "Commission" or "Group". However, once again we need to ensure that it is safeguarded. The price would be the "origin" price which would go into their depots. One entity should oversee compliance and the laws should be followed along with the mandatory sources.

The companies within the portal should be compliant to the laws that are in force and to the programs that

are protected under these laws. We truly need to see that we have wonderful laws and programs in place. However, through time, full compliance has not been enforced and many are and will have immense negative consequences if we are not careful.

In conclusion, I can not emphasize how important the Javits Wagner O'Day and the AbilityOne Program is to the employment opportunities for the blind and visually impaired.

I greatly appreciate this opportunity and I hope we could discuss this in further detail.

Attachments

Blindness Stats 2 of 2 001

Blindness Stats 1 of 2 001

Low Vision Stats 1 of 2 001

Low Vision Stats 2 of 2 001

Projections for Blindness (2010-2030-2050)

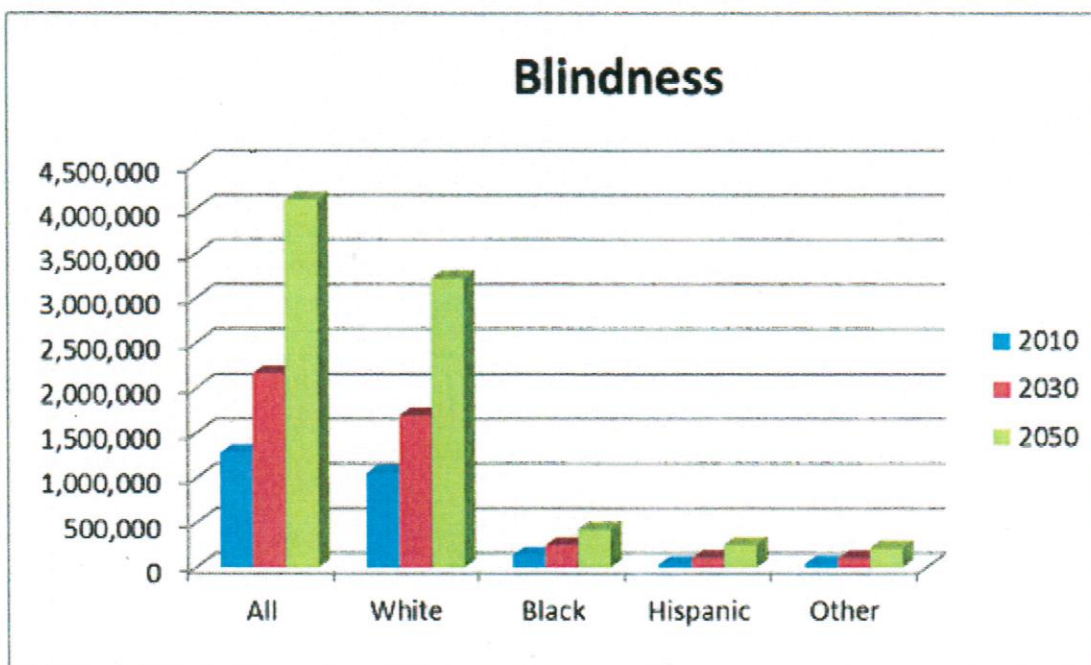
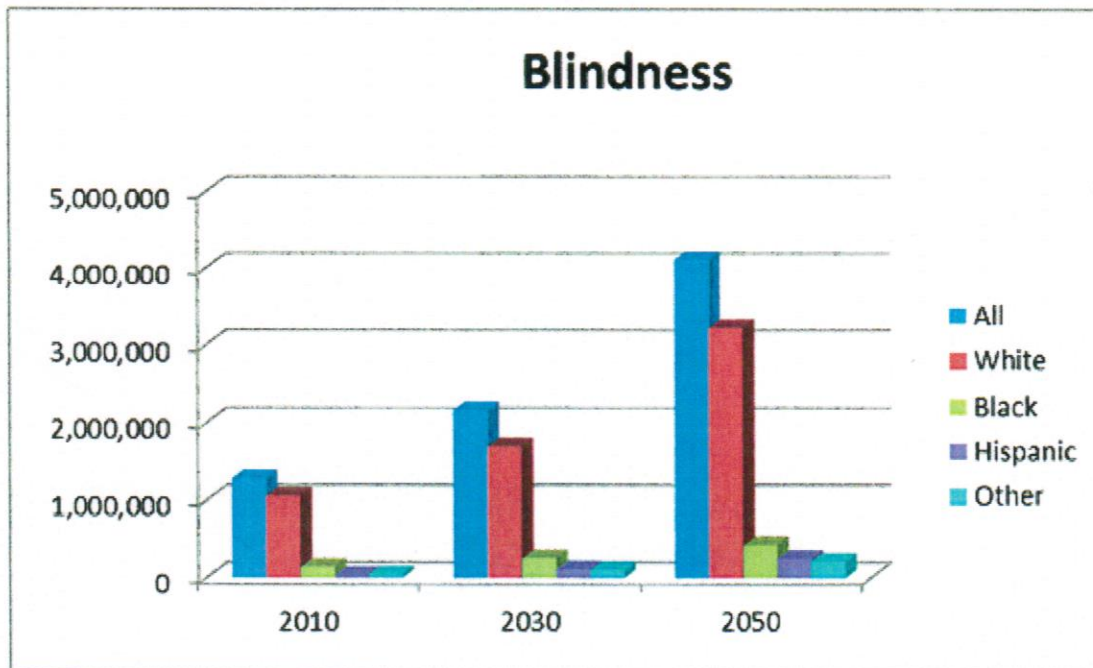


Table for Projections for Blindness (2010-2030-2050)

Changes of Cases between 2000 and 2010

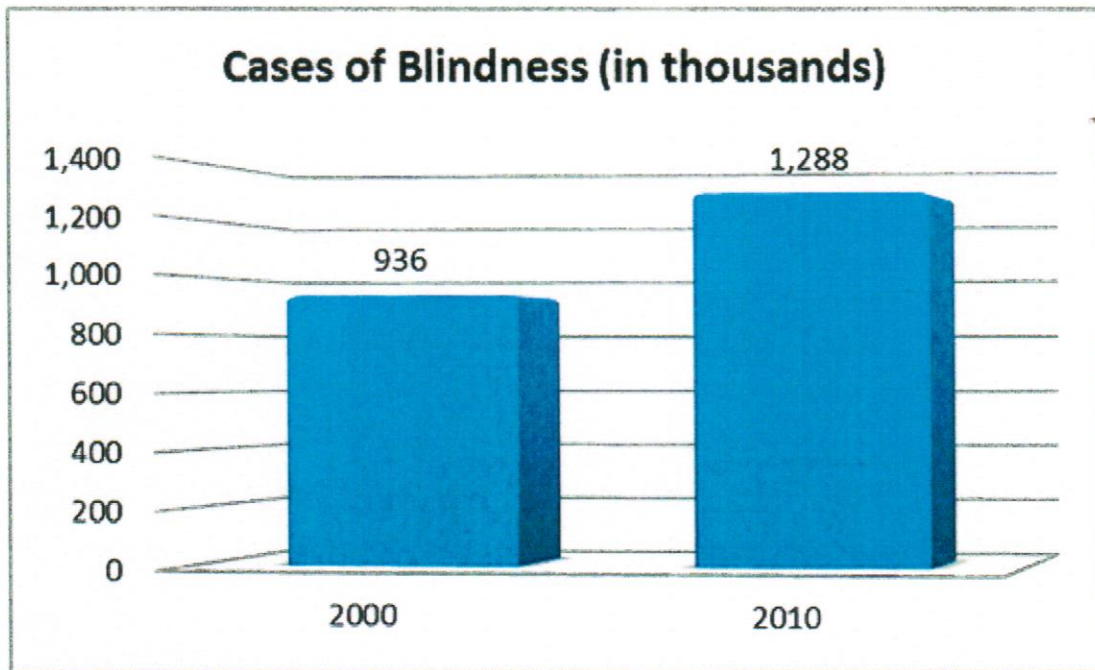


Table for Changes of Cases between 2000 and 2010

Projections for Low Vision (2010-2030-2050)

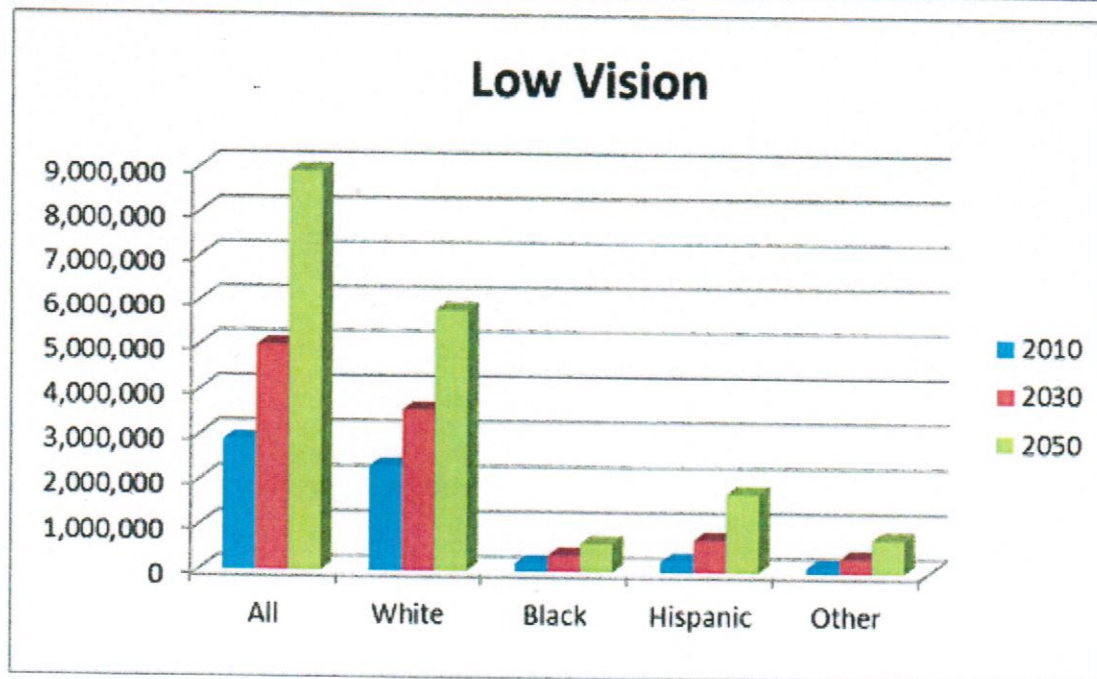
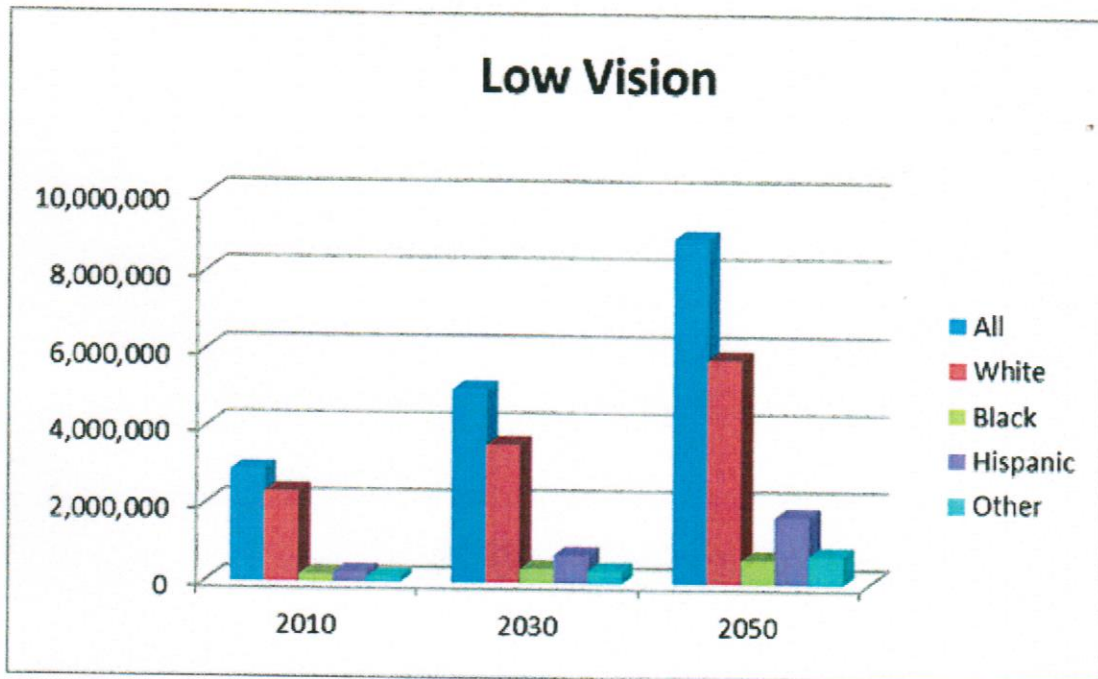


Table for Projections for Low Vision (2010-2030-2050)

Changes of Cases between 2000 and 2010

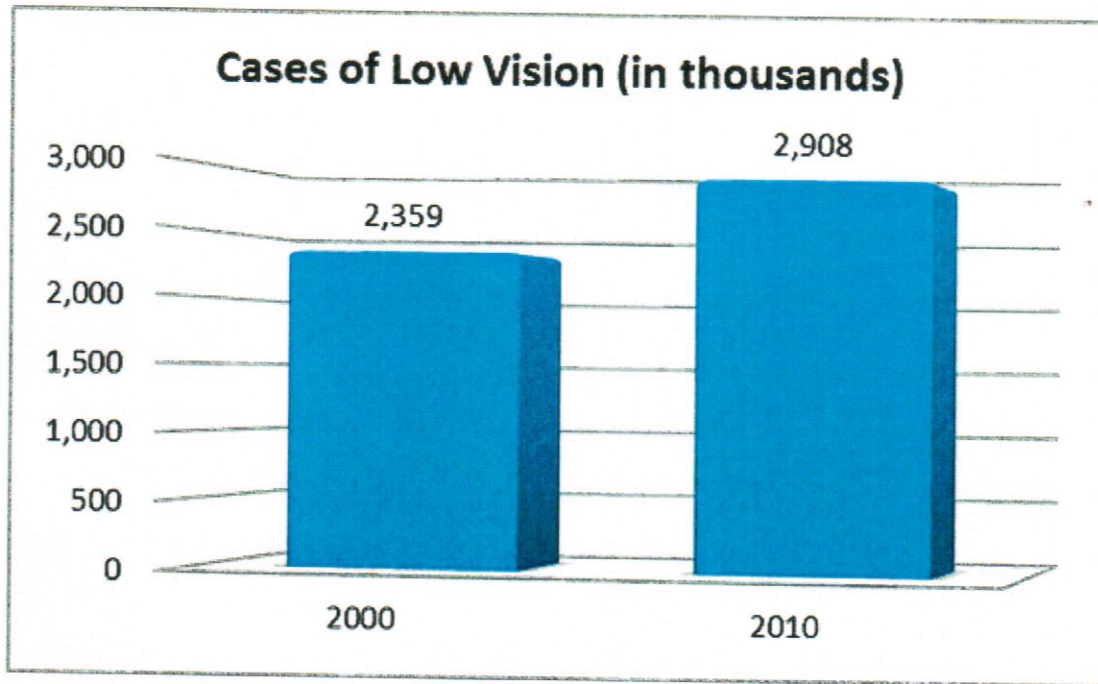
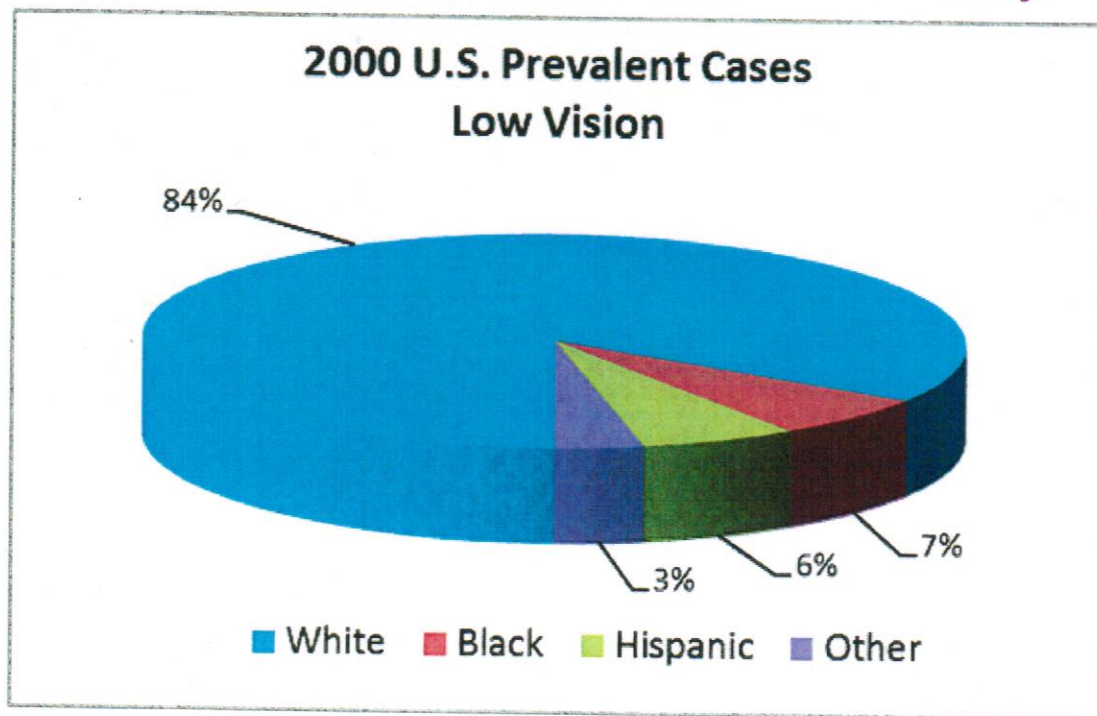


Table for Changes of Cases between 2000 and 2010

2000 U.S. Prevalent Cases of Low Vision (in thousands) by Age, and Race/Ethnicity



PUBLIC SUBMISSION

As of: 12/28/17 10:59 AM**Received:** December 25, 2017**Status:** Draft**Tracking No.** 1k1-90jt-rxyx**Comments Due:** January 16, 2018**Submission Type:** Web**Docket:** GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0711

Comment on FR Doc # 2017-26964

Submitter Information

Name: James Kerlin**Address:**

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General Comment

Wiscraft Inc. and Associated Industries for the Blind are 501c3 non-rpofit entities operating as Beyond Vision. Our Vision statement is, "Beyond Vision will enrich the lives of Americans who are blind...through the dignity of work valued by customers and the community." We are driven by the stubborn and sad nationwide statistics that roughly 70% of working age Americans who are blind are unemployed. Our mission of providing employment opportunities for people with vision loss is accomplished in large part through the manufacture and sales of products for the federal government via participation in the AbilityOne program, enabled by the JWOD Act. A picture is attached showing Beyond Vision's main facility and headquarters is in Milwaukee, WI along with many of our employees. Beyond Vision also operates 8 Base Supply Centers located on various Department of Defense (DoD) military installlations in 7 states (OH, IL, MI, MN, MO, and WI). We employ 100 people, including 50 individuals who are legally blind, most of whom are totally blind and/or have other disabilities.

Implementation of this e-Commerce platform, and how this system must ensure compliance with the JWOD statute and the mandatory purchase requirements of the JWOD Act and the AbilityOne Program. One key element of the JWOD Act are that the products produced by qualifying non-profits employing people who are blind or have other significant disabilities, and as such are added to the federal Procurement List (PL), are by statute MANDATORY purchases for any and all federal agency including all branches of the DoD. To be in compliance with the JWOD Act and supporting AbilityOne Commission policy, any e-Commerce procurement portal to/for the federal government must block Essentially The Same (ETS) equivilent products produced or supplied by other commercial entities and therefore not on the PL.

A second key element of the JWOD Statute is that products made by the qualifying non-profits employing the blind and disabled be sold at "Fair Market Price" (FMP). On behalf of the federal government, the US President appointed AbilityOne Commission has the responsibility and authority to establish the FMP for each product added to the PL for sale to the federal government. The FMP prices are by definition and intension of the JWOD Act represent the "fair" (not minimum) price to be paid by any/all government entities.

This program is not only intended to provide the social good of allowing people with blindness and other disabilities to enjoy the dignity and independence of work, it is also good for the tax payers. Every person with blindness or other disabilities who's job is enabled by the AbilityOne program, is a tax paying contributor to society instead of being completely dependent on the state via SSI, SSDI, and Medicaid social safety nets.

The effectiveness of the AbilityOne program to employ blind and disabled Americans, in the spirit of the JWOD Act, is based entirely on maintaining the integrity of the FMP and mandatory procurement aspects of the statute and supporting regulations and policies. These are the very core fibers of what makes this program effective. If a government e-Commerce portal were created that did not block ETS (Essentially The Same) commercial equivalent products sold often at a lower price than FMP, this program would be destroyed and many blind and disabled (as well as many sighted and non-disabled) Americans would lose their jobs and become once again dependent on the state.

If ETS blocking (to insure mandatory purchase of the PL items at Fair Market Prices) were not put in place for a e-Commerce government portal, at Beyond Vision alone 50 jobs of Americans who are blind and 100 total jobs would be jeopardized. Across the country roughly 50,000 jobs of blind and disabled Americans, as well as likely more than 100,000 total jobs would be in peril. That would be very bad for this the blind and disabled Americans employed by this program, for society, and for the American tax payers.

Please make ETS blocking required of any such e-Commerce portal to protect the sale of these PL products at FMP, and the jobs associated with their manufacture and distribution by Americans who are blind and otherwise disabled.

Attachments

IMG_0714

PUBLIC SUBMISSION

As of: 12/28/17 11:00 AM
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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0712

Comment on FR Doc # 2017-26964

Submitter Information

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LIGHTHOUSE FOR THE BLIND

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General Comment

Tarrant County Association for the Blind (TCAB) is a 501c3 non-profit organization operating as Lighthouse for the Blind of Fort Worth. Our mission is to provide meaningful employment opportunities and second to none Client Services to empower individuals who are blind to reach their maximum level of independence. We are driven by the stubborn and sad nationwide statistics that roughly 70% of working age Americans who are blind are unemployed. Our mission of providing employment opportunities for people with vision loss is accomplished in large part through the manufacture and sales of products for the federal government via participation in the AbilityOne program, enabled by the JWOD Act. We employ 67 people, including 39 individuals who are legally blind, most of whom are totally blind and/or have other disabilities. Nearly 97% of our direct labor is provided by individuals who are blind.

Implementation of this e-Commerce platform, and systemic compliance with the JWOD statute and the mandatory purchase requirements of the JWOD Act and the AbilityOne Program are paramount. One key element of the JWOD Act is that the products produced by qualifying non-profits employing people who are blind or have other significant disabilities, and as such are added to the federal Procurement List (PL), are by statute MANDATORY purchases for any and all federal agencies including all branches of the DoD. To be in compliance with the JWOD Act and supporting AbilityOne Commission policy, any federal e-Commerce procurement portal must block Essentially-The-Same (ETS) equivalent products produced or supplied by other commercial entities and therefore not on the PL.

A second key element of the JWOD Statute is that products made by the qualifying non-profits employing the blind and disabled be sold at "Fair Market Price" (FMP). On behalf of the federal government, the US President appointed an AbilityOne Commission that has the responsibility and

authority to establish the FMP for each product added to the PL for sale to the federal government. The FMP prices are by definition and intension of the JWOD Act represent the "fair" (not minimum) price to be paid by any/all government entities in consideration for the product or service received and the benefit of competitive employment provided to individuals with qualifying disabilities.

This program is not only intended to provide the social good of allowing people with blindness and other disabilities to enjoy the dignity and independence of work, it is also good for the tax payers. Every person with blindness or other disabilities whose job is enabled by the AbilityOne program, is a tax paying contributor to society instead of being completely dependent on the state via SSI, SSDI, and Medicaid social safety nets.

The effectiveness of the AbilityOne program to employ blind and disabled Americans, in the spirit of the JWOD Act, is based entirely on maintaining the integrity of the FMP and mandatory procurement aspects of the JWOD statute and supporting regulations and policies. These are the very pillars that make The AbilityOne program effective. If a government e-Commerce portal were created that did not block ETS (Essentially-The-Same) commercial equivalent products, often sold at a price below FMP, The AbilityOne program would be materially negatively affected and many blind and disabled (as well as many sighted and non-disabled) Americans would lose their jobs and become once again dependent on the state.

If ETS blocking (to insure mandatory purchase of the PL items at Fair Market Prices) were not put in place for an e-Commerce government portal, 25 Americans who are blind would be at risk of unemployment. Across the country roughly 50,000 jobs of blind and disabled Americans, as well as likely more than 100,000 total jobs would be at risk. The impact on an already under-employed segment of our population would be devastating for Americans employed by this program, for society, and for the American tax payers.

Please make ETS blocking a requirement of any such e-Commerce portal to protect the sale of these PL products at FMP, and the jobs associated with their manufacture and distribution by Americans who are blind and severely disabled.

Thank you,
Platt Allen, III
President/CEO
Tarrant County Association for the Blind

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0713

Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

As the President of Blind & Vision Rehabilitation Services of Pittsburgh, an NIB associated Non-profit I would like to submit comments regarding the importance of ensuring compliance with the JWOD act while implementing this purchasing platform. It is imperative that Essentially the same compliance continue to be enforced through this platform. Without this enforcement hundreds of jobs for people who are blind or visually impaired will be at risk. We understand the need for an on-line marketplace but want to make sure that it does not make it easier for government entities to purchase products outside of the Ability One program.

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Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0714

Comment on FR Doc # 2017-26964

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General Comment

See attached file(s)

Attachments

comments on Procurement through Commercial e commerce portals 12-27-17

Comments on Proposed Procurement through Commercial e-Commerce Portals

December 27, 2017

On behalf of Mississippi Industries for the Blind (MIB) in Jackson, MS, I respectfully submit the following comments regarding Section 846 of NDAA regarding Procurement through Commercial e-Commerce Portals.

While MIB understands that e-Commerce portals are the wave of the future for government procurement, these portals must also follow all government regulations and not provide a mechanism for purchases to go around existing laws and regulations. In the case of our agency, that regulation is the JWOD Act and the Ability One program. Under this program, items the government purchases which have been set aside for organizations employing people who are blind or have other significant disabilities are placed on a procurement list (PL) and become mandatory items that must be purchased by all government agencies. The PL is overseen by the U.S. Ability One Commission. The Commission decides which items are allowed to be added to the PL and also maintain the Fair Market Price (FMP) for each of these items. This system has been in place since 1938 and has provided employment to thousands of individuals during the 75+ years of its existence.

As for MIB, the items we have on the procurement list provides employment to approximately 50 individuals who are blind and another 40 individuals who do not have a disability. The mandatory status of the items MIB has on the PL provides steady employment for all of our employees.

One threat to these jobs is items that are essentially the same (ETS) to the MIB products that are being purchased by Federal Government agencies around the JWOD law. At this time, MIB and other organizations such as ours continually work with National Industries for the Blind to stop the purchase of ETS items. However, ETS items are being purchased which prevents MIB from providing employment to other individuals who are blind. We will continue to work together to prevent the purchase of ETS items by Federal agencies.

Any Commercial e-Commerce Portal used by GSA should incorporate mechanisms to prevent these ETS products from being purchased and thus uphold the mandatory status of the items in the Ability One program and help to maintain the jobs for all of the employees in the Ability One program. These jobs are critical to this population in the US. At this time, approximately 70% of working age Americans who are blind are unemployed. Every effort should be taken to not jeopardize any of these jobs and cause

this unemployment rate to increase. GSA has the perfect opportunity to include this protection in any commercial e-commerce portal from the beginning which would cause it to have the best opportunity for success.

Best Regards,

Michael Chew

Executive Director

PUBLIC SUBMISSION

As of: 1/5/18 8:19 AM
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Submission Type: Web

Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0715

Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

See attached file(s)

Attachments

Procurement Through Commercial E-Commerce Portals



December 28, 2017

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

**Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018,
Procurement through Commercial e-Commerce Portals**

Dear Ms. Mandell:

On behalf of Envision, Inc., we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

In order for the program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

It is inexcusable that under current procurement policies and procedures, government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statutes and regulations. Every time federal purchasing practices justify improper online purchases by micro purchase thresholds and specifically purchase Essentially the Same (ETS) supplies, it has a detrimental effect on almost 200 Envision employees and 45,000 others around the United States in manufacturing and retail positions. It reverses positive progress made by the AbilityOne Program – a program expressly authorized by Congress to address the urgent need to provide employment for people who are blind and, beginning in 1971, those with significant disabilities.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives

- continued -

the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

Envision is one of 100 National Industries for the Blind (NIB) affiliated agencies across the nation that are part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since 1933. Through Base Supply Centers (BSCs) operated at 16 military bases in 10 states with contracts through NIB and the AbilityOne program, Envision is not only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstance to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with lifestyles of independence. The JWOD Act and FAR statutes and regulations have saved taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

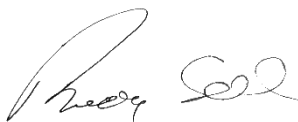
It is our duty to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Sincerely,



Michael J. Monteferrante
President and CEO
Envision, Inc.

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PUBLIC SUBMISSION

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0716

Comment on FR Doc # 2017-26964

Submitter Information

Name: Reinhard Mabry

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Kansas City, MO, 64132

General Comment

On behalf of Alphapointe, we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

Alphapointe is one of the largest employers of people who are blind in the United States and has been an AbilityOne nonprofit agency since the program's inception.

In order for the AbilityOne program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

It is inexcusable that under current procurement policies and procedures, government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statutes and regulations. Every time federal purchasing practices justify improper online purchases by micro purchase thresholds and specifically purchase Essentially the Same (ETS) supplies, it has a detrimental effect on 230 of Alphapointe's employees and 45,000 others around the United States in manufacturing and retail positions. It reverses positive progress made by the AbilityOne Program - a program expressly authorized by Congress to address the urgent need to provide employment for people who are blind and, beginning in 1971, those with significant disabilities.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase

specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

Alphapointe is one of nearly 100 National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since our founding in 1911.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them. Moreover, if some contractors are, by omission or commission, permitted to sell ETS items, while other authorized distributors adhere to ETS guidelines, it undermines the integrity of the procurement system and invites abuse to the detriment of the procuring entity and the taxpayer.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with lifestyles of independence. The JWOD Act and FAR statutes and regulations have saved taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

It is our duty to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Thank you for your consideration.

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0717

Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

For twenty years, I have served in many roles focused on the employment of people who are blind or visually impaired. 70 percent of working age Americans who are legally blind are not working. The reasons for this staggering number are long-standing and complicated. The work done by NIB Non-Profit Agencies is a remarkable solution to this employment issue. Not only does the program create jobs, it helps foster upward mobility. For the past four years, I've had the honor to serve in a leadership role at Beyond Vision, a NPA in Milwaukee, Wisconsin. I've witnessed the power of this program first-hand.

We understand that GSA is developing a new E-Commerce platform. This system must ensure compliance with the JWOD statute and the mandatory purchase requirements of the AbilityOne Program. The sale of ETS through such a system would harm employment for people who are blind. It would threaten a powerful resource for those in pursuit of upward mobility and the American dream.

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Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0718

Comment on FR Doc # 2017-26964

Submitter Information

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Organization: NAEPB

General Comment

Procurement through Commercial e-Commerce Portals Comments

December 29, 2017

Over the past year I have been working with the National Association for the Employment of People who are Blind (NAEPB) as a consultant. Members of the NAEPB operated approximately 152 Base Supply Centers (BSCs) primarily on military facilities. The BSC operators have had to deal with challenges presented by the federal procurement systems both on line and on base. As GSA considers utilizing procurement through commercial platforms it is critical that statutes and regulations affecting the blind be expressed in the programs statement of work and specifications.

It is clear that the value of work was the basis for the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. which requires the federal government to purchase supplies and services from the blind and disabled. The law also establishes the AbilityOne Commission to oversee nonprofit agencies that employ the blind and disabled and provide the government a Procurement List of supplies and services prioritized by JWOD and the Federal Acquisition Regulations (FAR).

Lives for those who experience blindness or disabilities have been changed by JWOD from dependency on federal programs to a lifestyle of independence. These statutes and regulations have saved tax payers millions in welfare costs and provided significant supplies and services for the federal government. However, federal procurement policies and procedures currently circumvent federal statutes and regulations which contribute to the current 70% unemployment rate for those who are blind.

It is imperative that in the initial statement of work and specifications express compliance, tracking and reporting of JWOD supplies and services as required by JWOD and by the FAR 8.002 and FAR 8.7 in the initial design requirements. If not included in the initial design circumvention of the statutes and regulations will occur and blind or disabled Americans jobs will be at risk.

Under current procurement policies and procedures government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statute and regulations regarding the blind and disabled. As a result federal purchasing practices circumvent supplies and services through online purchases by micro purchase thresholds, the rule of two and substitutions of Essentially the Same (ETS) supplies.

The Commercial e-Commerce Portals program should include design and implementation requirements that systematically safeguard and prevent unwarranted purchase of ETS and Commercial Off the Shelf (COTS) items intended to replace AbilityOne Procurement List supplies and services by including block and substitute techniques to comply with JWOD and FAR requirements.

To remain competitive the AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. Procurement List supplies and services are priced in accordance with these periodic reviews to maintain competitive pricing. Further, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Inspector General office and supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

Todd Tiaht
Member of Congress
(1995 to 2011)

Attachments

Procurement ecommerce portal comments

Procurement through Commercial e-Commerce Portals Comments

December 29, 2017

Over the past year I have been working with the National Association for the Employment of People who are Blind (NAEPB) as a consultant. Members of the NAEPB operated approximately 152 Base Supply Centers (BSCs) primarily on military facilities. The BSC operators have had to deal with challenges presented by the federal procurement systems both on line and on base. As GSA considers utilizing procurement through commercial platforms it is critical that statutes and regulations affecting the blind be expressed in the programs statement of work and specifications.

It is clear that the value of work was the basis for the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. which requires the federal government to purchase supplies and services from the blind and disabled. The law also establishes the AbilityOne Commission to oversee nonprofit agencies that employ the blind and disabled and provide the government a Procurement List of supplies and services prioritized by JWOD and the Federal Acquisition Regulations (FAR).

Lives for those who experience blindness or disabilities have been changed by JWOD from dependency on federal programs to a lifestyle of independence. These statutes and regulations have saved tax payers millions in welfare costs and provided significant supplies and services for the federal government. However, federal procurement policies and procedures currently circumvent federal statutes and regulations which contribute to the current 70% unemployment rate for those who are blind.

It is imperative that in the initial statement of work and specifications express compliance, tracking and reporting of JWOD supplies and services as required by JWOD and by the FAR 8.002 and FAR 8.7 in the initial design requirements. If not included in the initial design circumvention of the statutes and regulations will occur and blind or disabled Americans jobs will be at risk.

Under current procurement policies and procedures government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statute and regulations regarding the blind and disabled. As a result federal purchasing practices circumvent supplies and services through online purchases by micro purchase thresholds, the rule of two and substitutions of Essentially the Same (ETS) supplies.

The Commercial e-Commerce Portals program should include design and implementation requirements that systematically safeguard and prevent unwarranted purchase of ETS and Commercial Off the Shelf (COTS) items intended to replace AbilityOne Procurement List supplies and services by including block and substitute techniques to comply with JWOD and FAR requirements.

To remain competitive the AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. Procurement List supplies and services are priced in accordance with these periodic reviews to maintain competitive pricing. Further, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Inspector General office and supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

Todd Tiahrt
Member of Congress
(1995 to 2011)

PUBLIC SUBMISSION

As of: 1/5/18 8:28 AM Received: January 02, 2018 Status: Draft Tracking No. 1k2-90p1-qpm8 Comments Due: January 16, 2018 Submission Type: Web
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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0719
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

See attached file(s)

Attachments

G S A Broz

I am an employee of Clovernook Center for the Blind and Visually Impaired in Cincinnati. I am also an advocate for the National Industries for the Blind, which represents 102 companies nationwide, that employs blind and visually impaired people. I feel the "Procurement through Commercial e-Commerce Portals" is an excellent idea in order to simplify and streamline government purchasing. My main concern is the wording of the law. I would like to ensure that the mandatory purchase protections of the Javits-Wagner-O'Day Act and the AbilityOne Program are kept in place during this transition. The employees at the N.I.B. represented companies are very proud to be able to support America's Armed Services by supplying high quality products for our Servicemen. This is a lifelong commitment for the majority of these blind workers. Section 801 provides no way to ensure compliance with the Javits-Wagner-O'Day Act (Section 8503, Title 41). Without protections included in the language, "essentially the same" commercial items could very easily be purchased instead of AbilityOne products. We would request "block and substitute" language within the NDAA Conference Report that would prevent "essentially the same" commercial items from competing with AbilityOne products. If done correctly, this "block and sub" language could very easily block federal customers from purchasing the commercial equivalent of our programs products and instead substitute them with mandatory AbilityOne and SKILCRAFT® products, which would protect the AbilityOne Program and allow for the e-marketplace Section 801 intends to establish. Your concern for these devoted blind workers nationwide is greatly appreciated.

PUBLIC SUBMISSION

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0720
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

See attached file(s)

Attachments

Procurement Through Commercial E-Commerce Portals January 2 2017

Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals

Winston Salem Industries for the Blind, Inc. DBA IFB Solutions respectfully submits comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

IFB Solutions is one of 100 National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since 1936.

In order for the GSA's program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative that GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard jobs for Americans who are blind created through AbilityOne Procurement List items and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items.

IFB Solutions has more than 90 individuals who are blind assembling products for use by Federal Government customers, and we believe these jobs are at risk without the appropriate safeguards put in place to protect these American jobs. These are also our most vulnerable employees, as many of them have other disabilities beyond blindness. They may be working to the maximum of their abilities rolling shop towels together for DoD fleet services, or assembling scissors used in DLA warehouses, or operating complex assembly equipment for manufacturing pens and markers used by soldiers every day in the field. Without protections included in the program, "essentially the same" commercial items manufactured or assembled overseas could very easily be purchased instead of AbilityOne products assembled and packaged by people who are blind in the United States.

Government purchasers are not sufficiently trained to comply with statutes and regulations. Every time federal purchasing practices justify improper online purchases by micro purchase thresholds and specifically purchase Essentially the Same (ETS) supplies, it has a detrimental effect on the long-term sustainability of jobs for Americans who are blind working at IFB Solutions and 45,000 others employed because of the AbilityOne Program. Furthermore, ETS violations reverse positive progress made by the AbilityOne Program – a program expressly authorized by Congress to address the urgent need to create a platform that provides equal rights to employment for a disadvantaged population of Americans facing a 70% unemployment rate.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

The AbilityOne Commission periodically reviews the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives and careers that enable them to contribute to the world around them.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with opportunities to earn independence. The JWOD Act and FAR statutes and regulations have saved taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

Thank you for the opportunity to express our position on this critical issue. It is our duty to voice our concerns and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Sincerely,

David Horton
President and CEO
IFB Solutions
dhorton@ifbsolutions.org
336 245 5602

PUBLIC SUBMISSION

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0721

Comment on FR Doc # 2017-26964

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General Comment

See attached file(s)

Attachments

NewView Oklahoma Inc is a 501c3 non

NewView Oklahoma Inc is a 501c3 non-profit entity, founded in 1949. NVO is the largest employer of Oklahomans who are Blind, providing meaningful employment with dignity and pride in accomplishment through work valued by customers and the community. Like all the NIB agencies, we are driven by the nationwide statistics that roughly 70% of working age Americans who are blind are unemployed. Our mission of providing employment opportunities for people with vision loss is accomplished in large part through the manufacture and sales of products for the federal government via participation in the AbilityOne program, enabled by the JWOD Act. NewView employs 150 individuals of whom 115 are blind at various Department of Defense (DoD) military installations as well as 2 IRS facilities across 7 states.

*Implementation of this e-Commerce platform, and how this system must ensure compliance with the JWOD statute and the mandatory purchase requirements of the JWOD Act and the AbilityOne Program are critical to the survival of Non-Profit Agencies like NVO. The key element of the JWOD Act is that the products produced by qualifying non-profits employing people who are blind or have other significant disabilities, and as such are added to the federal Procurement List (PL), are by statute MANDATORY purchases for any and all federal agency including all branches of the DoD. To be in compliance with the JWOD Act and supporting AbilityOne Commission policy, any e-Commerce procurement portal utilized for procurement by the federal government must block **Essentially The Same (ETS)** products produced or supplied by other commercial entities. Without a blocking mechanism, there is no way to ensure adherence to federal procurement requirements under AbilityOne and without that, significant employment opportunities for people who are blind will be jeopardized.*

A second key element of the JWOD Statute is that products made by the qualifying non-profits employing the blind and disabled be sold at "Fair Market Price" (FMP). On behalf of the federal government, the US Presidentially appointed AbilityOne Commission has the responsibility and authority to establish the FMP for each product added to the PL for sale to the federal government. The FMP prices are by definition and intent of the JWOD Act represent the "fair" (not minimum) price to be paid by any/all government entities.

The intention of the program has always been twofold: provide social good by allowing people who are Blind to enjoy the dignity and independence of work and good for the taxpayers as the program allows consumers to become producers as Federal, State, and Local taxpayers and not dependent on entitlement programs.

*The effectiveness of the AbilityOne program to employ blind and disabled Americans is based entirely on maintaining the integrity of the **FMP, ETS**, and the mandatory procurement requirements of the statute. If a government e-Commerce portal is created that does not block **ETS** (Essentially The Same) products the AbilityOne program, NIB and scores of NPAs will be destroyed resulting in the loss of most blind employment (as well as many sighted and non-disabled) Americans. Experience and data show that a very high percentage of blind employees will not be able to find meaningful employment, and once again become dependent on the state.*

*If **ETS** blocking is not implemented as an integral part of any e-Commerce government portal, NewView Oklahoma could lose 115 jobs of Americans who are blind and likely most of the 150 total jobs. Nationwide roughly 50,000 jobs currently enjoyed by blind and disabled Americans will very likely cease to exist with little hope of being employed ever again, this would be devastating to the employees, harmful to society and ultimately for America.*

Please make ETS blocking required of any such e-Commerce portal to protect the sale of these PL products at FMP, and the jobs associated with their manufacture and distribution by Americans who are blind and otherwise disabled.

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Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0723

Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

Fees - Current commercial e-commerce portal providers such as Amazon charge sellers 6-20% of a products selling price plus a monthly \$39.99 fees. These fees are passed on to customers. Some federal agencies express concern about paying the GSA IFF of 0.75%. How will these federal agencies feel about paying significantly more?

Terms & Conditions

- o Country of Origin - How will the commercial e-commerce portal providers ensure items are BAA and/or TAA and/or Berry Amendment compliant?

- o Small Business Act Since the program focuses on simplified acquisition purchases and these are exclusively reserved for small business concerns (15 644(j)), this will hopefully increase contracting opportunities for small businesses.

- o Agency Specific Certain agencies such as VA and IHS have unique preferences to consider service disabled veteran owned small business and Indian owned businesses respectively first. These should remain.

- o Authorized User How will the portal provider ensure the customer is authorized to use this contract vehicle? What are the implications for state MACs such as TXMAS that currently rely on GSA?

- o Contract I think it's important for the portal provider to generate a SF1449 or some type of contract form so contracting officials can do that from within the portal and save time.

Number of Portals Consider requiring each portal provider to use open source code which would allow aggregated data to be analyzed.

Phase In Items will have to be phased in due to volume and magnitude. I would suggest phasing in according to GSA schedule. Run a report on low dollar high volume purchases by schedule and start with those. For example, schedule 56, 73 or 70 might go first. Threshold can remain as those below SAT.

Relationship - Has OMB/GSA considered having current GSA contracting officers oversee the vendors and items added to the commercial e-commerce portal and allow the portal provider to manage the IT/technology component? I think it would be a good idea, but then who pays GSA? The portal provider

pays GSA a % of sales?

Existing Programs FSS and FedMall will cease. Transition those contracting officers and vendors to the new platform. I anticipate substantial savings.

Competition No change in rules; exclusively reserved for small business concerns. VA shall consider SDVOSBs first.

Pricing Take it or leave it. Further negotiation requires additional unnecessary time and paperwork on both sides.

Compliance Commercially, most is based on self-reporting; the government warranted contracting officer managing the vendor and items should be responsible for ensuring compliance.

Small Businesses No adjustments needed. SAP items are exclusively reserved for small business concerns. Agency has discretion based on goals achieved, etc. to decide which selection is the best value for that agency. VA must consider SDVOSBs first.

Performance Government should be allowed to provide supplier and product reviews similar to today's commercial practices.

Responsibility of sellers This should be managed by a warranted contracting officer; use those at GSA, FedMall, ECAT, etc. who will be in need of employment.

Rulemaking Yes, these regulations should be in the FAR. That's the standard for government acquisition.

PUBLIC SUBMISSION

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0724

Comment on FR Doc # 2017-26964

Submitter Information

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San Antonio Lighthouse for the Blind

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General Comment

As the President and CEO of the San Antonio Lighthouse for the Blind & Vision Impaired, an NIB associated non-profit agency, I must make my concerns known on the importance of ensuring compliance with JWOD Act. The San Antonio Lighthouse employs over 250 people who are blind or severally vision impaired and many of these hard-working, self-sustaining individuals would be devastated if the on-line marketplace makes it easier for government entities to purchase outside of the AbilityOne Program. Many of these individuals, with a 70% unemployment rate among the blind, would find it difficult or impossible to regain employment.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. It is critical that Essentially the Same (ETS) compliance continue to be enforced. Without this enforcement hundreds of jobs for people who are blind will be in jeopardy. We urge you to support the JWOD statute.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0739
Comment on FR Doc # 2017-26964

Submitter Information

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Phone: 9035904301

General Comment

See attached file(s)

Attachments

GSA Fed Register 1.05.18

We believe it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List. Government purchasers should be trained to comply with the regulations and be required to measure and report AbilityOne supplies and services. Essentially the Same (ETS) sales should not be allowed by authorized distributors as these negatively impact employment opportunities for the blind and are contrary to the mandates of the JWOD act. The blind employees of East Texas Lighthouse for the Blind are counting on the enforcement of the JWOD act to maintain their jobs and their independent lifestyles. Their jobs are just as important to them as the job of anyone reading this comment.

David Huffman
CEO East Texas Lighthouse for the Blind

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0738
Comment on FR Doc # 2017-26964

Submitter Information

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Submitter's Representative: Lise
Organization: Bosma Enterprises

General Comment

See attached file(s)

Attachments

Comment_GSA_Ecomm_1_5_17

U.S. General Services Administration
Regulatory Secretariat Division (MVCB)
ATTN: Lois Mandrell
Washington, DC 20405-0001

January 4, 2018

To whom it may concern,

I am writing in response to the General Services Administration's (GSA) Notice of Public Meeting and Request for Information, entitled "Procurement through Commercial e-Commerce Portals." As the President & CEO of Bosma Enterprises, a not-for-profit organization affiliated with the AbilityOne Program, we have concerns about the adoption and implementation of the platform.

The intent to streamline procurement is a reasonable goal, but we strongly believe any implementation plan must include protections for the mandatory purchase requirements of the AbilityOne Program. The AbilityOne Program, authorized by the Javits-Wagner O'Day Act, is an employment program that creates jobs for over 46,000 people who are blind or have other significant disabilities throughout the country, including 7,000 veterans, who would otherwise face a 70 percent unemployment rate.

Procurement through commercial and e-commerce portals must include fail-safe measures to ensure compliance with the Javits-Wagner-O'Day Act (Section 8503, Title 41). Without these protections, "essentially the same" commercial items could very easily be purchased instead of AbilityOne products (despite the AbilityOne Program having mandatory purchase requirements in the statute). Noncompliance with the AbilityOne Program would threaten thousands of good paying jobs for people who are blind and undermine a law that has been in place since 1938.

At Bosma Enterprises, Indiana's largest employer and the only provider of services specifically for people who are blind or visually impaired, our ability to create employment and provide services are reliant upon our participation in the AbilityOne Program. Through our Federal contracts, we are able to provide high-quality products at fair market value while employing over 200 people and providing services to 1,000 people in our state who are blind.

We strongly encourage the GSA's implementation plan to include preventing "essentially the same" commercial items from competing with AbilityOne products by utilizing "block and substitute" filters within the e-commerce platform. If adopted and correctly implemented, this would easily keep federal customers from purchasing the commercial equivalent of our program's products.

Thank you in advance for your consideration.

Respectfully,



Lou MoneyMaker
Bosma Enterprises
President & CEO

PUBLIC SUBMISSION

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0737
Comment on FR Doc # 2017-26964

Submitter Information

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Submitter's Representative: Dirk Van Dongen

Organization: National Association of Wholesaler-Distributors

General Comment

See our uploaded file

Attachments

GSA-Comments-NAW



Dirk Van Dongen
President

January 5, 2018

U. S. General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street, NW, 2nd Floor
Washington, DC 20405-0001
ATTN: Lois Mandell

RE: *PROCUREMENT THROUGH COMMERCIAL E-COMMERCE PORTALS*
Notice – MV-2017-05; Docket No. 2017-0002; Sequence No. 25

Submitted via: <http://www.regulations.gov>

I write on behalf of the National Association of Wholesaler-Distributors (NAW) in response to the above-referenced Notice of a public meeting and request for information published in the *Federal Register* on December 15, 2017 (82 FR 59619).

NAW is the “national voice of wholesale distribution,” an association comprised of employers of all sizes, and national, regional, state and local line-of-trade associations spanning the \$5.6 trillion wholesale distribution industry that employs more than 5.9 million workers in the United States. Approximately 40,000 enterprises with places of business in all 50 states and the District of Columbia are affiliated with NAW.

NAW members, small, medium and large, include companies across industry sectors that supply commercial off-the-shelf (COTS) products to all agencies of the US government. Wholesaler-distributor federal COTS vendors subscribe to providing quality products at fair prices while complying with rules designed to ensure procurement integrity, and recognize the desirability of a streamlined government acquisition process that maintains appropriate legal, regulatory, and ethical protections for the government and taxpayers.

The complex task of implementing a reform of the manner in which federal departments and agencies acquire COTS products in an amount estimated to be in excess of \$50 billion annually (see 82 FR 59619) would be a daunting one even under the best of circumstances. In the instant case, occasioned by the enactment of the fiscal year 2018 *National Defense Authorization Act* (PL 115-91), “The Director of the Office of Management and Budget (OMB), in consultation with the Administrator (of the General Services Administration (GSA)) and the heads of other relevant

-more-

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

1325 G Street N.W., Suite 1000, Washington, DC 20005 • 202-872-0885 • FAX: 202-785-0586 • www.naw.org

January 5, 2018

Page 2

departments and agencies,” (NDAA Sec. 846(c)) is to undertake a significant restructuring based on a provision of law enacted without the benefit of a single public hearing during the legislative process. Consequently, we recognize the importance of this opportunity that GSA and OMB are affording stakeholders “to offer input on the first implementation plan due to Congress within 90 days of enactment” (see 82 FR 59619) and, in that regard, to provide “feedback ... on initial ideas for general program design and buying practices and, in that context, whether existing laws, Executive Orders, policy or other requirements may hinder effective implementation of the program” (see 82 FR 59619).

NAW commends the agencies for proceeding in a manner aimed at transparency, and which encourages the greatest possible degree of public comment and participation.

Our read of Section 846 is that Congress believes that the procurement of COTS products for the public sector will be greatly enhanced through competition and transparency. NAW agrees. While each member company will have somewhat different interests based on their lines of trade, their business model, or their experience as a government contractor, we offer these top line considerations. While many of our member companies will be amplifying their unique concerns on an individual basis, NAW members agree on the following:

- The process by which commercial e-commerce portal providers will compete, and the extent to which compliant online sites may participate as one of the “multiple contracts with multiple e-commerce portal providers” (NDAA, Sec. 846(a)), are matters of uniform interest among stakeholders in the wholesale distribution industry. Wholesaler-distributors typically offer a wide array of products that are brought to market by multiple suppliers, and NAW believes it vital that implementation of the Sec. 846 Procurement Through e-Commerce Portals program clearly enable all compliant online providers to participate to ensure that competition is as robust as possible. Therefore, we do not believe it is appropriate for the GSA to seek to limit overlap of product categories and/or make an award to a single e-commerce portal provider for a product category.
- The objective of ensuring vigorous competition for products meeting applicable statutory requirements will be advanced by prohibiting e-commerce portal providers open to third-party sellers from excluding any qualified seller (as defined by the U.S. government) from access to the portal.
- To ensure fair pricing and robust competition, require that the fee charged by a portal provider that is open to third-party sellers be fair and reasonable, transparent to all parties, and factored into the selection criteria by the government.
- The relevant requirements of the Buy America Act, the Trade Agreement Act and all other applicable terms contained in Federal Acquisition Requirement (FAR) 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (11/2017) and FAR 52.244-6 Subcontracts for Commercial Items (11/2107), should apply to transactions conducted through a portal.

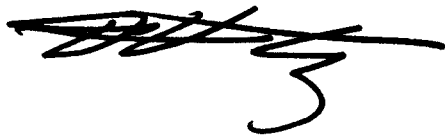
January 5, 2018

Page 3

- Only US domestic companies should be considered as commercial e-commerce portal providers.
- The objective of ensuring a secure supply chain requires purchasing from third-party sellers that are authorized by manufacturers to sell their products. Only manufacturer authorized distributors can stand behind commercial warranties and guarantee that the items offered for sale are genuine and meet government procurement requirements. Consequently, e-commerce portals should be required to verify that any third-party seller placing items for sale on its e-commerce portal are authorized by the manufacturer to do so and that they have a Letter of Supply to substantiate compliance with the Trade Agreements Act.
- NDAA Sec. 846(h), "Disclosure, Protection, and Use of Information," limits portals' ability to use transactional data derived from third-party suppliers featured on an e-commerce portal. The statutory language provides no guidance to the GSA Administrator regarding the enforcement of the requirements set forth in Sec. 846(h)(3). We believe it imperative that portal providers' use of data derived from the transactions of third-party sellers present on the portal be strictly limited to order processing and fulfillment and the use by such portal providers of the transactional data of third-party sellers for any other purpose be clearly and absolutely prohibited. Further, it is vital that GSA ensure that portal providers maintain appropriate data security and clearly hold portal providers responsible for data security breaches.
- GSA states in the instant Notice, "GSA has long been focused on improving the acquisition of commercial items. Throughout its history, GSA has sought to leverage the best available technology to help agencies shorten the time to delivery, reduce administrative cost, make compliance easier, be a strategic thought leader and supplier of choice across the Federal Government, and be a good partner to industry. *Today, the best available technology includes commercial e-commerce portals.*" (See 82 FR 59619. Emphasis added.) This is a sweeping statement that may not hold up under scrutiny with regard to *all* product lines. Indeed, NDAA Sec. 846(c)(2)(B) recognizes, as we do, widely divergent supply chain realities in various economic sectors, and we urge GSA to work closely with stakeholders to identify those products/product lines with particular health, safety and/or security concerns, and in particular products that are used in the treatment of patients, that are not suitable for online purchasing and to exempt them from the Procurement Through Commercial e-Commerce Portals program.

Thank you for your consideration of NAW's views.

Respectfully submitted,



Dirk Van Dongen
President

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0736
Comment on FR Doc # 2017-26964

Submitter Information

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Phone: 5048994501

General Comment

Lighthouse for the Blind New Orleans (Lighthouse Louisiana) is an AbilityOne agency operating under the Javitt's Wagner O'Day Act and supported in the FAR under section 8.1. We represent 170 employees within the states of Louisiana and Mississippi, including 95 employees who are blind and/or have a significant disability whose jobs are directly created through the AbilityOne program. The revenue we generate through production allows us to serve over a thousand individuals with disabilities within the state of Louisiana annually, providing services ranging from occupational therapy to workforce training.

We are proud of the number of our employees with disabilities who are able to roll off of SSDI, SSI and Medicaid programs and become tax paying contributors through their careers at the Lighthouse.

Under the mandatory source AbilityOne program, we work directly with GSA to maintain competitive prices while fulfilling the mission of the program, creating jobs for individuals with disabilities, a population that is the most likely to be under/unemployed in our country. In fact, 70% of people who are blind in the United States are unemployed.

While we support the desire to modernize purchasing mechanisms for the federal customer, we want to ensure that the propose portal protects the jobs the AbilityOne program creates. Any new online portal must include government audit and compliance review measures to ensure the law is being followed. To that same end, commercial products that are essentially the same (ETS) as AbilityOne products should not be available for purchase on these platforms. Government purchase of ETS products on current online platforms have been a persistent threat to the AbilityOne program and jobs for people who are blind.

Government customers should be able to go to a government contracted e-commerce platform and trust the products they buy are in compliance with federal regulations and ensuring that this is overseen by the government and not third parties is paramount to retaining integrity of the platform.

Sincerely,

Renee Vidrine
President
Lighthouse Louisiana

Attachments

LighthouseLouisianaGSAResponse



Lighthouse for the Blind New Orleans (Lighthouse Louisiana) is an AbilityOne agency operating under the Javitt's Wagner O'Day Act and supported in the FAR under section 8.1. We represent 170 employees within the states of Louisiana and Mississippi, including 95 employees who are blind and/or have a significant disability whose jobs are directly created through the AbilityOne program. The revenue we generate through production allows us to serve over a thousand individuals with disabilities within the state of Louisiana annually, providing services ranging from occupational therapy to workforce training.

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Under the mandatory source AbilityOne program, we work directly with GSA to maintain competitive prices while fulfilling the mission of the program, creating jobs for individuals with disabilities, a population that is the most likely to be under/unemployed in our country. In fact, 70% of people who are blind in the United States are unemployed.

While we support the desire to modernize purchasing mechanisms for the federal customer, we want to ensure that the proposed

portal protects the jobs the AbilityOne program creates. Any new online portal must include government audit and compliance review measures to ensure the law is being followed. To that same end, commercial products that are essentially the same (ETS) as AbilityOne products should not be available for purchase on these platforms. Government purchase of ETS products on current online platforms have been a persistent threat to the AbilityOne program and jobs for people who are blind.

Government customers should be able to go to a government contracted e-commerce platform and trust the products they buy are in compliance with federal regulations and ensuring that this is overseen by the government and not third parties is paramount to retaining integrity of the platform.

Sincerely,

Renee Vidrine

President

Lighthouse Louisiana

The Lighthouse for the Blind in New Orleans, Inc.

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0735
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

As the CEO of an AbilityOne participating agency, NewView Oklahoma (NVO), I feel it is necessary to submit comments in response to the GSA notice of procurement through commercial e-commerce portals. NVO is a 501(c)(3) nonprofit organization whose mission is to empower people who are blind or visually impaired to achieve their maximum level of independence through rehabilitation, employment and community outreach. We are the largest employer of people who are blind in the state of Oklahoma and also provide meaningful employment for people who are blind at 18 separate locations across 7 states. We currently employ 152 individuals, over 100 whom are blind or visually impaired. And we provide vision rehabilitation services to over 4,500 individuals, services that are critical to ensure an individual who is blind can achieve independence.

Nationwide, over 70% of working age adults who are blind or visually impaired are unemployed. The AbilityOne program in partnership with qualified participating agencies like NVO work to reduce this rate and give people who are blind meaningful opportunities by accessing the federal marketplace to provide goods and services to the federal government. It is imperative that implementation of any e-commerce platform supporting the federal marketplace ensures compliance with the mandatory purchasing requirements of the Javits Wagner O'Day Act (JWOD) and the AbilityOne program. Success of AbilityOne and of the associated nonprofit agencies like NVO is predicated on the assumption that items added to the federal procurement list become mandatory sources for federal customers, therefore, any e-commerce platform utilized by federal customers should block essentially the same (ETS) items to ensure compliance under AbilityOne and federal procurement law.

Another element of the JWOD statute is that products supplied by qualifying nonprofit agencies must be sold the government at an established fair market price(FMP). The AbilityOne Commission is tasked with setting FMP and represents the fair price to be paid by the government.

Our ability to provide meaningful employment for people who are blind under the AbilityOne program is directly tied to maintaining the integrity of the FMP process and ensuring ETS items are not sold to government customers in violation of the mandatory purchasing requirements outlined under the JWOD program. If this does not happen, the entire AbilityOne program could be decimated resulting in the loss of thousands of jobs across the country for people who are blind or who have other severe disabilities. As over 90% of NVO's business is conducted under AbilityOne, it is imperative that safeguards are put in place to ensure purchases authorized under the program or we could have to layoff a number of our employees and scale back services for people who desperately need them. The likelihood that our blind employees could find other employment outside of NVO is not good as there remain significant barriers to employment for individuals with visual impairments.

Please require any e-commerce portal to have ETS blocking mechanisms to protect sales of procurement list items at their established FMP, thus protecting jobs for thousands of Americans who depend on their livelihoods through AbilityOne participating agencies.

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0734
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

Procurement Through Commercial e-Commerce Portals

On behalf of Industries for the Blind, Inc. (IB) in Milwaukee, Wisconsin I am submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

IB is based in Milwaukee, WI. We are a non-profit organization dedicated to providing employment opportunities to blind and visually impaired professionals. IB is a self-sustaining, ISO 9001-2008 Quality Certified, not-for-profit 501(c)(3) organization committed to providing meaningful employment for the blind and visually impaired. Our company was incorporated in 1952 and today 52% of our 245 employees are blind or visually impaired.

Anytime federal purchasing practices justify the purchase of Essentially the Same (ETS) supplies, it has a very damaging impact to 128 of IB's employees and thousands of others around the United States in manufacturing and retail positions who are blind or visually impaired. It is also a direct attack on the AbilityOne Program, a program expressly authorized by Congress to address the need to provide employment for people who are blind and those with significant disabilities.

IB operates 13 Base Supply Centers (BSCs) on 13 military bases in 9 states with contracts through NIB and the AbilityOne Program. These BSCs provide retail jobs for blind and disabled workers and also indirectly supports more than 45,000 others who are blind or disabled who manufacture many of the quality and cost-effective AbilityOne products sold through all BSCs on a national scale.

Additionally, IB has created and maintains a robust e-Commerce portal with multiple supply programs that directly supports 10 full-time professional blind employees whose jobs would be directly threatened by allowing federal customers to purchase ETS products. Our e-Commerce web portal offers both AbilityOne as well as commercial products and is 100% ETS Compliant. Ensuring ETS Compliance is not complex or cumbersome in any way, and any online supplier to the government would have all the capabilities necessary to provide 100% ETS Compliance.

The majority of government purchasers need more training in federal purchasing policies and procurement regulations including ETS Compliance, and should have annual goals that measure and report their AbilityOne supply and service buys to help them to comply with those statutes and regulations that are part of the FAR.

This is where GSA could choose to make a landmark stand, for what is right and also what is required under the JWOD Act and FAR.

In order for the AbilityOne Program to preserve the more than 45,000 American jobs that benefit people who are blind or disabled, it is imperative that GSA ensures that the "Procurement through Commercial e-Commerce Portals" initiative is 100% compliant with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7.

GSA has worked as a partner with the AbilityOne Program in the past to ensure ETS Compliance for federal purchasers, so it should only follow that GSA will also ensure ETS Compliance is a key component of the design and functionality of the Procurement through Commercial e-Commerce Portals program of the future.

I applaud GSA for their past efforts and also feel they will come through for us in the future, because no supplier to the federal government should ever be allowed to circumvent the FAR and JWOD Act regardless of their size or commercial prowess.

Sincerely,

CJ Lange
President and CEO
Industries for the Blind, Inc.
Milwaukee, WI

Attachments

On behalf of Industries for the Blind Milwaukee WI Comments

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0733
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

I am the President/C.E.O. of North Central Sight Services, Inc. located in Williamsport PA. We are a small organization who employs twenty-nine individuals who are blind. We hold contracts with GSA for office products. Our employees who are blind work primarily under the Ability-One program. Ability-One provides the avenue for people who are blind or disabled the opportunity to have a meaningful job making wages well above the minimum and in our organization, to receive the identical benefits as our other individuals who are not visually impaired. Please be sure that any new electronic portal includes ETS blocking to be sure that the Ability-One mandatory product purchases are not substituted with similar products. If this happens, our employees who are blind will lose valuable jobs, become tax takers rather than tax payers and suffer significant loss of income. It is absolutely essential that any new electronic portal is designed to keep in mind the mandatory regulations of the Ability-One program. Our employees are very proud of their work and with a 70% under or unemployment rate for people who are blind, it is virtually impossible to find employment elsewhere. Once again, please be sure that your new program addresses the Ability-One program statute and protects jobs for people who are blind or disabled. I thank you in advance for your consideration of my comments. Robert Garrett, President/C.E.O. North Central Sight Services, Inc.

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Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0732
Comment on FR Doc # 2017-26964

Submitter Information

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Email: rudyd@cabvi.org
Phone: (315) 797-2233

General Comment

General Services Administration January 8, 2018
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals

Dear Ms. Mandell:

On behalf of the Central Association for the Blind and Visually Impaired (CABVI) we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

In order for the program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

It is inexcusable that under current procurement policies and procedures, government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statutes and regulations. Every time federal purchasing practices justify improper online purchases by micro purchase thresholds and specifically purchase Essentially the Same (ETS) supplies, it has a detrimental effect on 267 of CABVI employees and 45,000 others around the United States in manufacturing and retail positions. It reverses positive progress made by the AbilityOne Program - a program expressly authorized by Congress to address the urgent need to provide employment for people who are blind and, beginning in 1971, those with significant disabilities.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

CABVI is one of 100 National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since 1929. Through Base Supply Centers (BSC) operated at six military bases in six states with contracts through NIB and the AbilityOne program, CABVI is not only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with lifestyles of independence. The JWOD Act and FAR statutes and regulations have saved taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

It is the duty of all Americans to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Sincerely,
Rudy D'Amico
President & CEO
CABVI
rudyd@cabvi.org
(315) 797-2233

Attachments

Procurement Through Commercial E-Commerce Portals_CABVI_letter

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0731
Comment on FR Doc # 2017-26964

Submitter Information

Name: David Toogood
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Wichita Falls, TX, 76302

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment for about 500 people with disabilities in my company in Wichita Falls, Texas.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0730
Comment on FR Doc # 2017-26964

Submitter Information

Name: Richard Oliver

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General Comment

As an AbilityOne producing agency, Industries of the Blind in Greensboro NC has some strong concerns about the creation of GSA's e-commerce portals within the 2018 NDAA. Under the JWOD Act, AbilityOne agencies are a mandatory source for Federal users to purchase products and services. The concern is that by opening an e-commerce portals, how will the system adhere to the law and keep the AbilityOne mandatory requirements. By no means are we against this, we just want to make sure there is language written in the code that allows Federal users to purchase AbilityOne products. The AbilityOne Program and its associated agencies are the largest employer of people who are blind. The purchasing of produced products and services directly lead to creating and maintaining employment for people who are blind.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0729
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

See attached file(s)

Attachments

GSA LCI Response Procurement Through Commercial e-Commerce Portals 1-3-18



www.lcindustries.com
PH: 919.596.8277

January 8, 2018

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

Re: Notice-MV-2017-05; Docket No. 2017-0002; Sequence No. 25

Dear Ms. Mandell:

On behalf of LC Industries (LCI) we are submitting comments to the General Services Administration's (GSA) request for information regarding plans to develop *Procurement Through Commercial e-Commerce Portals*. Our comments refer specifically to Section B. Buying Practices, #3 Compliance and #4 Considerations for small businesses, socio-economic programs, and mandatory sources.

Section B. Buying Practices, #3 Compliance:

LCI operates under the AbilityOne program, and for the past eighty-two years has had a singular mission to find meaningful employment for people who are blind. As one of the nation's largest employers of people who are blind or who have low vision, LCI manufactures hundreds of AbilityOne products marketed under National Industries for the Blind's (NIB) *Skilcraft* brand. Today, these products are sold through existing government portals such as GSA Advantage! and FedMall.

One critical element to the success of the AbilityOne program is receiving government support to block the sale of commercial items that are deemed "essentially the same" (ETS) as AbilityOne products. The AbilityOne Commission publishes a list of ETS items on a quarterly basis. GSA, with the support of the AbilityOne Commission and NIB works hard to maintain compliance with the Javits Wagner O'Day Act by reviewing GSA schedule holders' catalogs and eliminating those commercial ETS items that conflict with AbilityOne products. Without such support and commitment to program compliance, the sale of AbilityOne products would significantly diminish putting in jeopardy thousands of jobs held by people who are blind or who have low vision.

The current ETS list provided by the AbilityOne Commission is based on industry wholesaler or superstore catalogs and is an incomplete or imperfect list. We urge GSA to work with commercial e-commerce portal providers to identify and block additional ETS items that such providers may source above and beyond normal industry channels. Examples of such items may be a portal provider's private brand product.

As GSA develops implementation plans for commercial e-commerce portals, it is essential that the critical work of compliance continue and that supplier catalogs continue to be

scrutinized and commercial ETS items are eliminated. In today's sophisticated e-commerce world any major e-commerce provider either has the tools or can develop the tools to review supplier catalogs and eliminate specific products that are not compliant.

In a highly transactional environment which the proposed e-commerce portals represent, LCI believes the responsibility for compliance best resides with the portal provider. Implementing relatively simple "block and substitute" technology is not difficult. If responsibility for compliance is left to government purchasers, who often lack the training and knowledge of which items are or are not ETS, the sale of AbilityOne products will diminish. There are simply too many products to keep track of, and it becomes an unnecessary administrative burden to place this responsibility at the purchaser level. Please keep that responsibility with the portal provider who, with GSA's support, have the tools to load compliant catalogs.

Section B. Buying Practices, #4 Considerations for small businesses, socio-economic programs, and mandatory sources:

The federal government created socio-economic and mandatory source programs like AbilityOne with specific intentions. In the case of AbilityOne, which is underpinned by the Javits Wagner O'Day Act (1938, and amended in 1973), the intention was clear: help reduce the 70% unemployment rate that affects people who are blind or who have low vision. Other socio-economic programs support the important entrepreneurial work of small, small-disadvantaged, women-owned and veteran-owned businesses.

LCI believes that maintaining support for these important socio-economic and mandatory source programs in no way conflicts with or reduces the features and benefits of commercial e-commerce portals. We believe that the federal purchaser can indeed have the best of both worlds: a state-of-the-art e-commerce portal with the highest levels of customer support, and a safe harbor environment that supports important socio-economic and mandatory source programs.

As one of the largest manufacturers of products currently sold under the mandatory AbilityOne program, LCI strongly urges GSA to continue its long-standing support of this important employment program. There is a direct link between the purchase of AbilityOne products and the employment of people who are blind or who have other severe disabilities. For most not-for-profit companies like LCI that operate under the AbilityOne program the federal government is the largest user and purchaser of their products. LCI strongly urges GSA not to adjust its support of this important program in any way that would diminish sales and thereby reduce employment.

We urge GSA to maintain support for this important mandatory source program by negotiating with commercial e-commerce portal providers to create and maintain a catalog environment that is a safe harbor for federal purchasers, free of ETS commercial items that conflict with AbilityOne.

Thank you for the opportunity to provide comments on this important issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Hawting". The signature is stylized with a large, looped "H" and a trailing flourish.

Jeffrey Hawting

President, LCI

Jeffrey.hawting@lc-ind.com

919-596-8277, x2144

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0728
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

Comment on FR Doc #2017-26964

As a member of the federal AbilityOne Program, the Virginia Industries for the Blind (VIB) proudly employs 105 of employees who are blind or vision impaired (out of our 190 total) at 25 locations across the Commonwealth of Virginia. We manufacture products, operate 10 Base Supply Centers (BSC), and hold a dozen other service contracts found on the federal Procurement List (PL). These goods and services provide direct employment for 90 of our employees and allow us to remain financially solvent to employ the others. We are working hard at VIB to create quality employment opportunities for people who are blind or have other significant disabilities. VIB pays at least minimum wage and provides benefits for salaried employees.

As you know, goods and services on the PL are mandatory for all federal agencies to purchase and moving to an online marketplace to improve efficiencies and the customer experience can help ensure the continued viability of the AbilityOne Program if the marketplace is designed to ensure all federal buyers comply with existing federal laws such as the Javits-Wagner-O'Day (JWOD) Act. The online marketplace can, and must, prevent federal buyers from circumventing procurement rules by buying Essentially-the-Same (ETS) items from non-AbilityOne sources. The marketplace can also strengthen the AbilityOne Program by channeling these procurements through the BSC network when a BSC serves the buyer's delivery address.

VIB agrees that improving the buying experience for our federal customers is an important goal, but that does not mean that the goal of providing an advantage in federal procurement for people who are blind or

have other significant disabilities cannot be supported as well. Allowing this drive for efficiency to replace the goal of providing quality employment for a population of people where 70% of the working-age group suffers unemployment through no fault of their own would be a lost opportunity.

You can improve efficiency while ensuring compliance and employment opportunities (and, thereby, tax revenue) through this online marketplace. Please strive to achieve all three objectives.

Matt Koch
General Manager
Virginia Industries for the Blind

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0727
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

January 8, 2018

Distinguished members of the General Services Administration and the Office of Management and Budget:

The opportunity to be a productive member of society is one of the most empowering things an individual can experience. This is especially true for over 100 employees at the Association for the Blind and Visually Impaired (ABVI) based in Rochester, NY who are blind or visually impaired. These dedicated individuals are proud to produce high-quality SKILCRAFT products through the AbilityOne Program for the Federal Government and specifically, the Department of Defense. Unfortunately, this opportunity potentially will be squelched by Section 846 of the National Defense Authorization Act (NDAA) for the Fiscal Year 2018, Procurement through Commercial e-Commerce Portals. We strongly support including the necessary protections for the AbilityOne Program's mandatory purchase requirements in any program design, buying practices, implementation, or other considerations that are a part of Phase I and its initial implementation.

At ABVI we believe that inclusion of "block and substitute" language and strict compliance with federal law (JWOD Act and the AbilityOne Program) are non-negotiable "must have" building blocks of any e-Commerce platform that is phased in. Without protections included in the "block and substitute" language, "essentially the same" commercial items could very easily be purchased instead of SKILCRAFT products produced by Americans who are blind. By not following the mandated purchase

requirements in Federal statute, it is highly likely that there will be increased unemployment in the blind and visually impaired populations throughout the country.

Currently, 70 percent of Americans who are blind or visually impaired are unemployed or not a part of the workforce at all. The AbilityOne Program, through 501c3 not-for-profit agencies like ABVI, employs more than 45,000 people who are blind or have significant disabilities. It is estimated that 30,000 of these employees work on Department of Defense contracts. This includes service-disabled veterans who have transitioned to the AbilityOne Program. At ABVI, our employees who are blind or visually impaired are proud to support our men and women in the Armed Forces by manufacturing uniforms. Since this unit started in 2004, our employees have produced over 500,000 uniforms.

Noncompliance with the AbilityOne Program would threaten the jobs of tens of thousands of Americans who are blind. Moreover, should Phase I of NDAA for Fiscal Year 2018, Section 846 Procurement through Commercial e-Commerce Portals move forward without "block and substitute" language and strict compliance with federal law included, the livelihood of blind Americans will be in serious jeopardy.

We ask that the General Services Administration (GSA) and the Office of Management and Budget (OMB) direct the Administrator of GSA to establish a program to procure commercial products through commercial e-commerce portals that include "block and substitute" language and strict compliance with federal law (JWOD Act and the AbilityOne Program).

We would be happy to meet with representatives from GSA and/or OMB to educate them on this important topic. If done correctly, including "block and substitute" language and mandating strict compliance with federal law (JWOD Act and the AbilityOne Program) would protect the jobs of Americans who are blind through the AbilityOne Program and allow for the e-marketplace NDAA's Section 846 intends to establish.

Thank you for to opportunity to comment on this important matter and how we can work together to continue to make a dramatic positive impact in the lives of Americans who are blind.

Sincerest regards,

A. Gidget Hopf, Ed.D
President and CEO

Attachments

GSA OMB Official Comments_1_8_2018_ABVI letterhead

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0726
Comment on FR Doc # 2017-26964

Submitter Information

Name: Frederick Puente
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General Comment

General Services Administration January 8, 2018
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals

Dear Ms. Mandell:

On behalf of Blind Industries and Services of Maryland (BISM), we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals. BISM is one of one hundred (100) National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired.

We strongly believe that allowing Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items to replace the AbilityOne Procurement List is, frankly, an awful idea. ETS items should not be sold by unauthorized distributors to federal customers under any circumstances. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them. To that

end, we have reviewed a number of posted comments which address this issue more completely and agree with those comments.

Similarly important, however, is the role of AbilityOne Base Supply Centers (BSC) in providing employment to people who are blind or visually impaired. BISM currently operates BSC locations at eight (8) military bases in four (4) states and the District of Columbia. These locations are supported through contracts with NIB and the AbilityOne program and must remain a viable program. Through the BSC program, BISM is not only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

The loss of commercial product sales through the BSC program has the potential of causing the 152 Base Supply Centers across the nation to close down. For BISM, this would cause the loss of employment for all 65 of our retail associates. The negative impact does not, however, end at a loss of jobs. The purchases and sales made by the nationwide BSC program are an important part of the supply chain that allows the AbilityOne program to make and sell its manufactured products, including the Skilcraft brand. If the BSC purchases of "blind made" products ceases, this would, inevitably, cause a termination of employment off additional blind people throughout their organizations. Moreover, many of those same agencies depend on their BSC sales (both Commercial and AbilityOne) to fund many of their own service programs. In BISM's case, proceeds from the sales made at our BSC's help fund the quality rehabilitative and vocational programs we make available to the community.

Accordingly, we request that, when developing the guidelines and business practices for this initiative, you ensure ETS Compliance by requiring a true blocking system is required to prevent selling of commercial products in-place of the required AbilityOne Product. Secondly, we request that you establish policies and procedures that clearly require that wherever a government or military organization has an AbilityOne BSC, that such organization continue to shop for both Commercial and AbilityOne products at those "brick and mortar" BSC locations as well as the respective BSC supported online ecommerce portal.

Thank you for your time and attention to these matters. If you have any questions, please do not hesitate to communicate with me.

Sincerely,

Frederick J. Puente, President
Blind Industries and Services of Maryland

Attachments

BISM Procurement Through Commercial E-Commerce Portals_sample letter

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0725
Comment on FR Doc # 2017-26964

Submitter Information

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Fax: 2693830357

General Comment

MidWest Enterprises for the Blind, Inc. is a self-supporting not-for-profit agency located in Kalamazoo, Michigan. Our mission is to provide employment opportunities to people who are blind. We fulfill our mission by providing quality products and services to the Federal Government through the AbilityOne Program. We employ 21 people who are blind in part-time and full-time positions. Our employees earn competitive wages and generous benefits.

We are writing with concerns for Section 846 (Procurement Through e-Commerce Portals). We are concerned that the e-Commerce marketplace will not be compliant with the Javits-Wagner-O'Day Act (Section 8503, Title 41). Without protections included in the language, "essentially the same"/ETS commercial items could very easily be purchased instead of AbilityOne products (despite the AbilityOne Program having mandatory purchase requirements in statute) Noncompliance with the AbilityOne Program would threaten thousands of good paying jobs for people who are blind and would undermine a law that has been in place since 1938.

A potential solution to the risk of purchasing ETS items would be to require online marketplaces to block the purchase of ETS items and substitute them with AbilityOne and other items that comply with mandatory purchase requirements already codified by law.

At MidWest Enterprises for the Blind are ISO certified, quality focused and customer centric. We take pride in our work and our mission of employing people who are blind.

It is vital to our mission and our employees that GSA support the AbilityOne Program and not allow

"essentially the same" items to replace AbilityOne and SKILLCRAFT products.

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0724
Comment on FR Doc # 2017-26964

Submitter Information

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Industries of the Blind
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Email: jgould@iob-gso.com

General Comment

Thank you for the opportunity to submit comments regarding the issue of the 2018 NDAA provision regarding Procurement through commercial e-commerce portals. As the President of the Industries of the Blind, based in Greensboro, NC, I see firsthand the critical importance that the Javits Wagner O'Day Act and the AbilityOne Program play in facilitating the employment of those who are blind in the United States. Our mission is to provide opportunities for employment and personal development for people who are blind or visually impaired to achieve greater independence. With the help of these programs, Industries of the Blind employs 250 people and collectively agencies across the United States employ thousands of people.

The ability to develop a dedicated, on-line portal for the ordering of products has the potential to create a meaningful benefit and I agree with exploring this opportunity to make our country's purchasing more efficient and effective. At the same time, it is highly important in approaching this issue, we ensure that all companies and organizations involved in this maintain full compliance to all applicable laws. In this case, it is critical that the procurement of goods be done in compliance with existing laws. Compliance with the JWOD Act and the policies of the AbilityOne Commission require that a federal e-Commerce procurement portal block Essentially-The-Same (ETS) equivalent products supplied by other commercial entities. Further, it is critical that the Fair Market Price, required by the JWOD Act and administered by the AbilityOne commission, not be ignored as this is essential in ensuring that participating agencies such as ours be compensated in a manner that allows us to fulfill our mission of employment. These regulations and policies enable the employment of many thousands of United States citizens who might otherwise not have a job and we should ensure that is not jeopardized.

Thank you for the opportunity to comment on this highly important issue.

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0741
Comment on FR Doc # 2017-26964

Submitter Information

Name: Linda O'Neill
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General Comment

RE: PROCUREMENT THROUGH COMMERCIAL e-COMMERCE PORTALS
Notice -MV-2017-05; Docket No. 2017-0002; Sequence No. 25

Submitted via: <http://www.regulations.gov>

Dear Ms. Mandell:

I write on behalf of the Health Industry Distributors Association (HIDA) in response to the above-referenced Notice of a public meeting and request for information published in the Federal Register on December 15, 2017 (82 FR 59619).

Attachments

HIDA Letter to GSA - FINAL



January 9, 2018

U. S. General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street, NW, 2nd Floor
Washington, DC 20405-0001
ATTN: Lois Mandell

RE: *PROCUREMENT THROUGH COMMERCIAL e-COMMERCE PORTALS*
Notice –MV-2017-05; Docket No. 2017-0002; Sequence No. 25

Submitted via: <http://www.regulations.gov>

Dear Ms. Mandell:

I write on behalf of the Health Industry Distributors Association (HIDA) in response to the above-referenced Notice of a public meeting and request for information published in the *Federal Register* on December 15, 2017 (82 FR 59619).

HIDA is the trade association representing medical products distributors, all of which deliver medical products and supplies, manage logistics, and offer customer services to more than 294,000 points of care – including numerous Department of Defense and Veterans Affairs healthcare facilities. HIDA members primarily distribute items used in every day medical services and procedures, ranging from gauze and gloves to diagnostic laboratory tests and capital equipment. Their customers include over 210,000 physician offices, 6,500 hospitals, and 44,000 nursing home and extended care facilities throughout the country, as well as numerous federal agencies and their healthcare facilities. Most members distribute medical supplies and devices, but many also distribute pharmaceuticals, nutritionals, technology solutions, and many other products. Member companies differ by size, market, and specialty, but they share a focus on providing solutions that support patient care, enhance efficiency, and help providers manage total costs.

HIDA members are vendors who subscribe to providing quality products at fair prices while complying with rules designed to ensure procurement integrity, and they recognize the desirability of a streamlined government acquisition process that maintains appropriate legal, regulatory, and ethical protections for the government and taxpayers. However, the procurement and contracting process for healthcare products is unique and HIDA members have long been proactive partners in helping streamline the process and bring the best of the commercial marketplace to the federal government through programs like the Prime Vendor Program.

HIDA recognizes that the task of implementing a reform of this magnitude - reworking the manner in which federal departments and agencies acquire commercial products - and the significant challenges it will pose. In this particular case, set forth by the enactment of the fiscal year 2018 National Defense Authorization Act (PL 115-91), the GSA is faced with a number of complicating factors and unique circumstances – particularly with regards to healthcare products.



Per the law, “The Director of the Office of Management and Budget (OMB), in consultation with the Administrator (of the General Services Administration (GSA)) and the heads of other relevant departments and agencies,” (NDAA Sec. 846(c)) is tasked with reworking a procurement process based on legislation that saw no public comment and lacked thorough Congressional review or regular order oversight. Consequently, the opportunity that GSA and OMB are affording stakeholders is particularly important, and HIDA lauds the agencies for proceeding in a manner aimed at transparency, and which encourages the greatest possible degree of public comment and participation.

As the legislative process for the NDAA concluded, HIDA spoke numerous times with the staff of the House Armed Services Committee and the Senate Armed Services Committee, working to remove any unintended consequences for federally controlled healthcare facilities and the patients they treat.

HIDA is profoundly concerned about a host of unintended consequences which would likely be created for these healthcare facilities and the patients they treat as a result of Sec. 846, some of which include:

- Mistaken delivery of the wrong surgical supplies, antibiotics, or other critical medical products could delay critical patient surgeries or procedures.
 - Needlessly and avoidably putting patients’ lives at risk.
 - Product integrity such as proper temperature controls and other special handling circumstances is also a factor in terms of:
 - how many times a product has been shipped and handled;
 - environmental exposures; and
 - co-mingling with non-medical freight.
- DoD/VA hospitals and clinics rely on stable and reliable sources of supply and the critical infrastructure supplied by their distributor partners. This confidence is established over time, and the relationship is unique to the industry as many commercial partners have employees based in DoD facilities to manage ordering, logistics as well as ensuring product is grouped for the correct floor, clinic, etc.
 - Distributors provide certainty to the quality of product entering the supply chain, something that is critical to the welfare of the patients being treated with these products.
- Medical-Surgical distributors spend considerable time to ensure compliance with FDA compliance protocols around storage, handling, licensing, unique device identification implementation and traceability implementation – something that should not be compromised.
- DOD/VA hospitals also depend on their commercial partners for critical support for emergency preparedness and response. This is not an activity that can be turned on and off as understanding product needs, protocols, etc. need substantial planning time.

Many of these concerns were heard and the text of the legislation bears out the concerns that lawmakers have regarding the uniqueness of the healthcare supply chain and the products it supplies to the healthcare facilities set to be affected by the procurement changes. In fact, NDAA Sec. 846(c)(2)(B)(C) recognizes the concerns presented by HIDA, and requires “Consultation with affected departments and agencies about their unique procurement needs, *such as supply chain risks for health*



care products, information technology, software, or any other category determined necessary by the Administrator.” as well as “An assessment of the products or product categories that are suitable for purchase on the commercial e-commerce portals.”

HIDA commends the agencies for proceeding in a manner aimed at transparency, and which encourages the greatest possible degree of public comment and participation. We are committed to working together to find the best way forward for the health and safety of countless patients across the country.

We urge GSA to work closely with HIDA and our member companies to identify those products/product lines with particular health and safety concerns, and in particular the countless products that are used in the health and treatment of patients that are not suitable for online purchasing and to exempt them from the Procurement Through Commercial e-Commerce Portals program. Our principal focus is on preventing a host of unintended consequences for these healthcare facilities and the patients they treat and we look forward to working with GSA to ensure that the application of Sec. 846 to the health sector be altered so that there are no unintended consequences which may compromise the health and safety of patients.

Thank you for your consideration of HIDA’s views. If you have any questions, I can be reached at 703.838.6125 or rouse@hida.org. We look forward to working with the agencies in the weeks and months to come.

Respectfully,

A handwritten signature in blue ink, appearing to read "Linda Rouse O'Neill", is written over a light blue circular stamp.

Linda Rouse O'Neill
Vice President, Government Affairs
Health Industry Distributors Association (HIDA)

PUBLIC SUBMISSION

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0740
Comment on FR Doc # 2017-26964

Submitter Information

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Phone: 623-233-7904

General Comment

See attached file(s)

Attachments

RMonaco input

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

January 12, 2018

Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals

Dear Ms. Mandell:

I am submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

In order for this program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits-Wagner-O'Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. The initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design for this to occur. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

The AbilityOne Program is a federal purchasing program established in 1938 by Congress to create employment opportunities for people who are blind or have significant disabilities, through the provision of products and services to federal customers. The Javits-Wagner-O'Day Act is the authorizing legislation for the AbilityOne Program. Today, nearly 4,500 people who are blind work as part of the AbilityOne Program. For nearly 80 years, local NIB associated nonprofit agencies have provided products and services to the federal government, including the General Services Administration (GSA).

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

If this e-Commerce platform is put into operation in its current framework, government buyers will not be able to differentiate between discretionary and mandatory purchases. Failure to purchase mandatory AbilityOne products and services on the Procurement List as required by the JWOD Act will result in job loss for people with disabilities.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

Arizona Industries for the Blind is one of 102 National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since 1952. Through Base Supply Centers (BSC) with contracts through NIB and the AbilityOne program, AIB is not only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilling lives in careers that enable them to contribute to the world around them.

With enactment of the JWOD Act, congress wisely recognized the social and economic benefit of empowering people with blindness and other disabilities to earn dignity and independence through work and to provide government customers with quality products at a fair price. Additionally, every person with a disability whose job is enabled by the AbilityOne program, is a tax paying contributor to society instead of being completely dependent on costly state and federal social safety net programs like Medicaid, Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). According to the Social Security Administration, for every \$1 spent on assisting an eligible individual with a disability to secure quality employment, \$7 is returned to the U.S. Treasury. Moving people to and keeping people self-reliant is the most effective cost containment practice available.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with lifestyles of independence. The JWOD Act and FAR statutes and regulations have saved taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

Before federal procurement through a commercial e-Commerce portal may proceed, there must be a system change to ensure compliance with the JWOD Act and the mandatory purchase requirements of the Act. AbilityOne products must be separated and identified as required purchases to protect the jobs of people with significant disabilities.

It is everyone's responsibility to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Sincerely,



Richard Monaco
President/CEO
Arizona Industries for the Blind
rmonaco@azifb.com
(623) 233-7904

PUBLIC SUBMISSION

As of: 1/12/18 2:41 PM
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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0743

Comment on FR Doc # 2017-26964

Submitter Information

Name: John Mitchell

Address:

Cincinnati Association for the Blind & Visually Impaired

20145 Gilbert Ave

Cincinnati, OH, 45202

Email: john.mitchell@cincyblind.org

Phone: 513-487-4241

Fax: 513-221-2995

General Comment

Dear Government decision makers,

I am providing this written comment today to urge you to ensure the mandatory provisions of the JWOD Act are maintained

as you consider implementing eCommerce portals for US Federal Government procurement. We must guarantee that this new

e-commerce platform ensures compliance with the provisions of JWOD statute and upholds the mandatory purchase

requirements of this extremely important Jobs Program. Currently there are more than 45,000 Americans who have significant

disabilities employed in this Program, nationally. Many of whom are United States Veterans. Without the mandatory

Purchasing requirements, many of these jobs will be lost as sales of similar, non-JWOD products will be purchased and reduce

the demand for the JWOD products and the associated labor needed to manufacture the products.

I urge you to ensure the mandatory provisions of the JWOD Act are maintained and these much needed jobs are protected.

Sincerely,

John Mitchell

1/12/2018

<https://www.fdms.gov/fdms/getcontent?objectId=0900006482dcf661&format=xml&showorig=false>

Cincinnati Association for the Blind & Visually Impaired
2045 Gilbert Avenue
Cincinnati, OH 45202

MV-2017-05 Comment #33

PUBLIC SUBMISSION

As of: 1/12/18 2:42 PM
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Tracking No. 1k2-90uh-8adu
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Submission Type: Web

Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0744

Comment on FR Doc # 2017-26964

Submitter Information

Name: Timothy Voit

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135 Greenwood Avenue

Wyncote, PA, 19095

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Fax: 215-576-1827

General Comment

Our company is a small business which includes a manufacturing division making textile products in the USA. We are greatly concerned that the "Amazon Amendment" would have the following effect:

- 1) It would channel US Federal Government, especially defense procurement, towards products produced in countries such as China and Pakistan, with whom the US Military has tense relations.
- 2) By pushing US Defense and other Federal procurement towards China and Pakistan, it would undermine the remaining US Industrial base which would be unavailable in the event of a conflict.
- 3) This would punish countries with fair trade practices who participate in the TAA program and reward countries who unfairly subsidize their textile and other industrial export centers.
- 4) It would devastate the many small businesses, including Veteran, Women-owned and Minority-owned, who have put scarce resources into complying with the requirements of GSA
- 5) It would advantage large, multi-national E-Commerce platforms with much larger resources and whose business practices have contributed to the erosion of the US Industrial base, undermining Defense readiness.

For the above reasons, we are very opposed to the implementation of this Amendment.

PUBLIC SUBMISSION

As of: 1/12/18 2:44 PM
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Tracking No. 1k2-90v4-i4ms
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Submission Type: Web

Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0745

Comment on FR Doc # 2017-26964

Submitter Information

Name: Janet Griffey

Address:

2701 Noblin Road

Suite 2705

Raleigh, NC, 27604

Email: jgriffey@rlcb.net

Phone: 919-256-4223

General Comment

Dear Ms. Mandell:

On behalf of RLCB, Inc. we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

In order for the program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

It is inexcusable that under current procurement policies and procedures, government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statutes and regulations. Every time federal purchasing practices justify improper online purchases by micro purchase thresholds and specifically purchase Essentially the Same (ETS) supplies, it has a detrimental effect on 45 of RLCB, Inc. employees and 45,000 others around the United States in manufacturing and retail positions. It reverses positive progress made by the AbilityOne Program - a program expressly authorized by Congress to address the urgent need to provide employment for people who are blind and, beginning in 1971, those with significant disabilities.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

RLCB, Inc. is one of 100 National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since 1966. Through Base Supply Centers (BSC) operated at 8 military bases in 5 states with contracts through NIB and the AbilityOne program, RLCB, Inc. is not only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with lifestyles of independence. The JWOD Act and FAR statutes and regulations have saved taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

It is our duty to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Sincerely,

Janet Griffey
President & CEO
RLCB, Inc.
jgriffey@rlcb.net
919-256-4223

Attachments

Procurement Through Commercial E-Commerce Portals_RLCB

PUBLIC SUBMISSION

As of: 1/12/18 2:47 PM
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Tracking No. 1k2-90vl-rco2
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Submission Type: Web

Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0746
Comment on FR Doc # 2017-26964

Submitter Information

Name: David Pump
Address:
2828 Granda Blvd
Pueblo, CO, 81005

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

As of: 1/12/18 2:50 PM Received: January 12, 2018 Status: Draft Tracking No. 1k2-90vv-quyv Comments Due: January 16, 2018 Submission Type: API

Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0748

Comment on FR Doc # 2017-26964

Submitter Information

Name: Dan Carrell

Address:

3039 Cornwallis Road

Research Triangle Park, NC, 27709

Email: dcarrell@us.ibm.com

Phone: 919-254-7820

Organization: IBM

General Comment

This is an exciting topic and clearly an opportunity for GSA to take a major step forward in terms of bringing enhanced speed of execution, improved user experience, streamlined operations, risk mitigation, and optimized terms and conditions to the service they provide the federal government. I would encourage GSA to partner with a supplier who can provide a cloud based industry leading solution that will allow for a competitive marketplace which provides stakeholders with best in class pricing, a simple/self evident shopping and buying experience, detailed reporting/analytics capability, and the ability to control spend and channel to approved suppliers which meet diversity, ethical and sustainability requirements.

PUBLIC SUBMISSION

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Tracking No. 1k2-90vr-kr1w
Comments Due: January 16, 2018
Submission Type: Web

Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0747

Comment on FR Doc # 2017-26964

Submitter Information

Name: Willa Adams

Address:

658 Valley St

Lewistown, PA, 17044

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As The leader of an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

I appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and I request that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs here at NuVisions Center and all the other NPAs working within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0749

Comment on FR Doc # 2017-26964

Submitter Information

Name: Cathy West

Address:

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Talladega, AL, 35161

Email: west.cathy@aidb.org

Phone: 2567613388

Fax: 2567613505

General Comment

See attached file(s)

Attachments

Procurement Through Commercial E-Commerce Portals_Cathy West

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

January 12, 2018

Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals

Dear Ms. Mandell:

On behalf of the Alabama Industries for the Blind we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

In order for the program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

It is inexcusable that under current procurement policies and procedures, government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statutes and regulations. Every time federal purchasing practices justify improper online purchases by micro purchase thresholds and specifically purchase Essentially the Same (ETS) supplies, it has a detrimental effect on 140 of Alabama Industries for the Blind employees and 45,000 others around the United States in manufacturing and retail positions. It reverses positive progress made by the AbilityOne Program – a program expressly authorized by Congress to address the urgent need to provide employment for people who are blind and, beginning in 1971, those with significant disabilities.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

Alabama Industries for the Blind is one of 100 National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since 1936. Through Base Supply Centers (BSC) operated at 4 military bases in 2 states with contracts through NIB and the AbilityOne program, Alabama Industries for the Blind is not only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them.

Sales of AbilityOne items plummeted with the closure of GSA managed SSSC/Country Stores and the issuance of the Government Purchase Cards during the 1990's. AbilityOne agencies were devastated by the loss in sales. To combat this loss the National Industries for the Blind was offered the opportunity to operate base supply centers on military bases and in government buildings to provide a means of selling AbilityOne items.

Implementation of an ecommerce portal without strict ETS compliance requirements could be more devastating than the GSA actions of the 1990's. Leakage of AbilityOne items due to ETS violations continues to occur in spite of the GSA ETS requirements for GSA schedule holders. Not only will manufacturing jobs for visually impaired be lost but also sales jobs for visually impaired at the 150 plus AbilityOne Base Supply Centers be lost. These jobs must be protected through strict ETS enforcement including blocking sales of ETS items.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with lifestyles of independence. The JWOD Act and FAR statutes and regulations have saved taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

It is our duty to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Sincerely,

Cathy West
Sales and Marketing Manager
Alabama Industries for the Blind
West.cathy@aidb.org
256-761-3388

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0750

Comment on FR Doc # 2017-26964

Submitter Information

Name: Jack Young

Address:

3650 Range Road
Rapid City, SD, 57702

General Comment

As the contract manager for the Base Supply Store on Ellsworth Air Force Base currently ran by Black Hills Services we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

Our mission is to create a community where everyone participates to achieve a life of full potential. Our vision is community where all people are good neighbors, valued friends, productive workers, respected leaders, and caring volunteers. One of the ways we achieve this by providing meaningful employment through programs like Base supply stores.

In order for the program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

By using the E-commerce platform, the entire AbilityOne program could be demolished resulting in the loss of thousands of jobs across the country for people who are blind or who have other severe disabilities. Which then leads to thousands more people on SSI, SSDI, Medicaid and may other federally funded assistance programs.

It is our duty to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

1/16/2018

<https://www.fdms.gov/fdms/getcontent?objectId=0900006482df99c2&format=xml&showorig=false>

MV-2017-05 Comment #40

Sincerely,
Jack Young
Contract Manager
Black Hills Services

PUBLIC SUBMISSION

As of: 1/16/18 9:28 AM
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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0751
Comment on FR Doc # 2017-26964

Submitter Information

Name: Lori Kain
Address:
2001 North E. Street
Pensacola, FL, 32501

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

As of: 1/16/18 9:29 AM
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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0752

Comment on FR Doc # 2017-26964

Submitter Information

Name: Craig Levin

Address:

3950 Range Road
Rapid City, SD, 57702

General Comment

As the Vice President of Vocational Services Black Hills Services we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

Our mission is to create a community where everyone participates to achieve a life of full potential. Our vision is community where all people are good neighbors, valued friends, productive workers, respected leaders, and caring volunteers. One of the ways we achieve this by providing meaningful employment through programs like Base supply stores.

I fully understand why it might seem like a good business decision to open this market up to e-commerce however I strongly believe this will negatively affect the mandatory purchase requirements of the AbilityOne Program. The AbilityOne Program, authorized by the Javits-Wagner O'Day Act, is an employment program that creates jobs for over 46,000 people who are blind or have other significant disabilities throughout the country and over 3,000 veterans.

Procurement through nonprofit programs that are within the AbilityOne network include fail-safe measures to ensure compliance with the Javits-Wagner-O'Day Act (Section 8503, Title 41). Commercial and e-commerce purchases don't appear to be subject to these rules and regulations therefore, "essentially the same" commercial items could very easily be purchased instead of AbilityOne products. E-Commerce providers are not willing to take on the administrative burden of ensuring all purchases are within these rules and regulations. Over time the sales of "essentially the same" (ETS) items will decrease and so will the thousands of jobs that employ the above mentions individuals who are blind or have other significant disabilities. Which will ultimately lead to an increase in individuals on depending more and more on government assistance as their livelihood.

Sincerely,
Craig Levin
Vice President of Vocational Services
Black Hills Services

PUBLIC SUBMISSION

As of: 1/16/18 9:29 AM
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Status: Draft
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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0753
Comment on FR Doc # 2017-26964

Submitter Information

Name: Brad Saathoff
Address:
3650 Range Road
Rapid City, SD, 57702

General Comment

As the Chief Executive Officer of Black Hills Services we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

Our mission is to create a community where everyone participates to achieve a life of full potential. Our vision is community where all people are good neighbors, valued friends, productive workers, respected leaders, and caring volunteers. One of the ways we achieve this by providing meaningful employment through programs like Base supply stores.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

BH Services is one of hundreds of nonprofit agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. Through the Base Supply Center (BSC) at Ellsworth Air Force Base in South Dakota and with contracts through NIB and the AbilityOne program, we are not

only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them.

Sincerely,
Brad Saathoff
Chief Executive Officer
Black Hills Services

PUBLIC SUBMISSION

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Status: Draft
Tracking No. 1k2-90xu-1hkb
Comments Due: January 16, 2018
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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0754
Comment on FR Doc # 2017-26964

Submitter Information

Name: Stephen Sachs
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Altadena, CA, 91104

General Comment

To Whom it May Concern:

Per the Notice: Procurement Through Commercial e-Commerce Portals, we are entering comments as it relates to two essential existing laws- the Small Business Act's Mandatory Reserve and the VA's Veterans Benefit Act (VBA) requirement.

As stated by Kevin Lynch of the National Industries for the Blind (NIB), "no waivers or intention for relief from existing laws should be granted and this includes not only the AbilityOne program but all applicable sourcing requirements of the Trade Agreements Act, the Small Business Act, and Buy America Act, among others. There are reasons that these laws exist-- good public policy reasons."

As such, we wanted to state that VA's Veterans First Program should be applied to all purchases by VA buyers through any portal under \$250,000 in accordance with 38 USC 8127(d), where the Rule of Two applies unless otherwise provided for 38 USC 8127 (b) and 8127 (c).

Additionally, the Small Business Act's mandatory reserve for all procurements above the micro purchase threshold and below the simplified acquisition threshold should also be maintained and supported. As stated throughout the comments by various participants, simple algorithms can be created to ensure compliance with these two necessary public policy goals. Moreover, as Mr. Aronie stated in his comments, there is a necessity to balance public good and purely commercial practices and these two regulations. The statutory requirements for these two set asides have existed for a long period of time and should be enshrined in any new portal to simplify and automate many of the commercial item acquisitions the government undertakes.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0755
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

Existing procurement mandates can indeed be included in commercial e-commerce online portals, and should thus be appropriately incorporated and enforced according to the laws and regulations. Please see the attached document for full comments about this issue.

Attachments

Procurement thru comm e-comm portals 01-16-2018



HEADQUARTERS
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SHREVEPORT, LA 71103
318.635.6471
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WWW.LABLIND.COM

January 15, 2018

General Services Administration
Regulatory Secretariat (MVCB)
Attn.: Lois Mandell
1800 F Street NW, 2nd Floor
Washington, DC 20405-0001

**Re: Procurement through Commercial e-Commerce Portals
NDAA 2018 Section 846**

Dear Ms. Mandell:

Background

Louisiana Association for the Blind (LAB) is a not-for-profit community service provider, the mission of which is to provide services, training, and employment for individuals who are visually impaired. LAB has been affiliated with the AbilityOne Program since 1973, creating employment for 45 years through the opportunities created by the Javits Wagner O'Day (JWOD) Act (41 U.S.C. §§ 8501-8506).

Our employees who are visually impaired are like all U.S. residents who seek The American Dream; that is, the opportunity and means to create a life of independence and self-sufficiency. The AbilityOne Program was created to help provide access to employment for individuals with vision impairment or with significant disabilities, and now employs over 46,000 people nationwide.

Current Situation

As technologies continue to impact how the world does business, it is inevitable that technological changes will weave their way into how our federal government conducts business. The proposal of a federal procurement system through the use of commercial e-commerce portals is a prime example. In fact, online federal procurement platforms already exist, via sites such as GSA Advantage (www.gsaadvantage.gov).

Discussion

In considering how a commercial e-commerce online portal should be constructed, implemented, and monitored, it is imperative to honor existing federal mandates such as the AbilityOne Program, as well as mandates outlined in Federal Acquisition Regulations (FAR)

8.002 and 8.7. For example, on the GSA Advantage landing page, special programs such as AbilityOne are prominently positioned, enabling purchasers to easily access the program and remain compliant with federal law.

A vital component of a successful commercial e-commerce online portal is inclusion of “block and substitute” (block-and-sub) to ensure compliance with federal mandates. When making a purchase using government funds, AbilityOne is a mandatory procurement source. For example, if the government purchaser attempts to buy an item that is essentially the same (ETS) as an item listed on the AbilityOne procurement list, then use of block-and-sub technology ensures the federal mandate is met.

With respect to ensuring competitive pricing within the proposed online portal, AbilityOne-affiliated agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable process for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement List are considered fulfillment of the federal government’s socio-economic programs.

A second and equally important consideration in designing a commercial e-commerce online portal is that of the AbilityOne Base Supply Centers (BSC) program. Over 100 brick-and-mortar BSCs are operated on our nation’s military installations and in federal buildings. BSCs are considered a “service” project, in accordance with 41 CFR Chapter 51. According to the AbilityOne.gov website, BSCs “are vendors of choice, providing efficient and effective sourcing on base, reduced procurement workload, short notice contingency operations support, liberal return policies and enhanced security by minimizing the number of delivery vehicles entering the installation” (Source: http://www.abilityone.gov/distributors/base_supply.html, accessed January 15, 2018).

That is, BSCs create employment for individuals with vision impairment, helps keep procurement costs down through reduced procurement workload, and serves as a mission-essential function in providing quickly needed products while helping enhance base security through reduced outside traffic. Approximately 145 military and federal locations carry custom inventory to support the mission of each location served.

For example, LAB operates BSCs on Barksdale Air Force Base (BAFB) and at Fort Polk. Recently, deployments at BAFB required military personnel to acquire newly mandated uniforms before departing. The BSC’s relationship with BAFB enabled personnel to acquire the new uniforms and other required items on short notice, often notice so short that even 1- or 2-day delivery would be too late. BSCs truly serve an essential function to the installations they serve, by ensuring the needs of the federal customer are met in a timely and cost effective manner.

The Bottom Line

When building the commercial e-commerce online portal, keep in mind the lives of those who work hard every day to support our country. The JWOD Act and FAR statutes and regulations have enabled tax users to become tax payers. On the other hand, federal procurement


policies and procedures that circumvent federal statutes and regulations only contribute to the current 70% under-employment, unemployment, and non-employment of our residents who are visually impaired.

Existing procurement mandates can indeed be included in commercial e-commerce online portals, and should thus be appropriately incorporated and enforced according to the laws and regulations.

Individuals who are visually impaired are seeking the same thing anyone else is: the opportunity to be independent and self-sufficient. The AbilityOne Program provides that opportunity, resulting in competitively priced goods and services produced for purchase by the federal government. U.S. residents who are visually impaired cannot serve in our nation's military, but their support of our country is demonstrated every day through their labors to produce the goods and services needed by our country. On my very first day at LAB, an employee who is visually impaired greeted me with "welcome to opportunity." Truer words were never spoken about the AbilityOne Program.

Thank you for your consideration.

Respectfully,



Libby Murphy
President and CEO

PUBLIC SUBMISSION

As of: 1/16/18 9:32 AM
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Tracking No. 1k2-90y1-u0xh
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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0756
Comment on FR Doc # 2017-26964

Submitter Information

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Fax: 607-771-8045

General Comment

I represent the staff and employees of the Association for Vision Rehabilitation and Employment, Inc. (AVRE), headquartered in Binghamton, NY. In addition to providing vision rehabilitation services to blind and visually impaired consumers in nine New York counties, we employ 60 people at our manufacturing facility in Downtown Binghamton and 16 switchboard operators at three VA hospitals - two in the Mid-Hudson Valley and one in the Bronx. Fifty-five of our employees are blind or visually impaired.

Within the federal marketplace, we are guided by and work under the policies and requirements of the AbilityOne Program (Javits, Wagner, O'Day Act). Our primary competencies are the manufacture of copy paper and manila file folders under the Skilcraft brand. We value the privilege to do business with the United States government, especially the opportunity to serve our veterans through our work in the VA hospitals.

Recently, the House passed the National Defense Authorization Act (NDAA) which included a provision (Section 801) that creates an e-marketplace for the Department of Defense. As American taxpayers, we appreciate the potential broad efficiency of this streamlined function, however, the provision does not include language that defines the mandatory purchase requirements of the AbilityOne Program. Without the proper language, "essentially the same" commercial products can be purchased in place of approved AbilityOne products. As an industry, we continually face daunting challenges and threats to our program. If the appropriate protections are not added to the provision, thousands of good paying jobs for people who are blind are at risk.

We are requesting that "block and substitute" language be added within the NDAA Conference Report that would require that "essentially the same" commercial products be blocked and substituted with the appropriate AbilityOne product. On our behalf, National Industries for the Blind (NIB) provided sample "block and substitute" language to the Senate Armed Services Committee.

We thank you for your consideration and are available to address any questions or concerns you may have. I can be reached at 607-724-2428 or kfernald@avreus.org.

Respectfully,

Kenny J Fernald
President/CEO, AVRE

Kenny J. Fernald
President/CEO
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www.avreus.org

Creating opportunities for success and independence with people who are blind or visually impaired

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0757
Comment on FR Doc # 2017-26964

Submitter Information

Name: Bill Brown
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General Comment

To Whom it May Concern,

As an AbilityOne nonprofit agency, we Access: Supports for Living is interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs such as ours that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage!, and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, we urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and we look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0759

Comment on FR Doc # 2017-26964

Submitter Information

Name: Jay Burrell

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780 Corporate Woods Parkway
Vernon Hills, IL, 60061

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0758

Comment on FR Doc # 2017-26964

Submitter Information

Name: Pat Zaccario

Address:

The Arc of Bergen and Passaic Counties
Hackensack, NJ, 07601

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0760
Comment on FR Doc # 2017-26964

Submitter Information

Name: Paul Cantwell
Address:
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Green Bay, WI, 54303

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0761

Comment on FR Doc # 2017-26964

Submitter Information

Name: Ann Graff

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1500 Ewing Drive
Sedalia, MO, 65301

General Comment

To Whom it May Concern,

Thank you for the opportunity to submit comments regarding the implementation plan for "Procurement Through Commercial e-Commerce Portals" as required by the National Defense Authorization Act of FY 2018. As an AbilityOne nonprofit agency (NPA) provider, I am very interested in how this new program will impact employment for people with significant disabilities. The AbilityOne Program is a critical source of employment at NPAs that provide general commodities, such as office products, to the federal government as mandatory sources of supply.

We appreciate the ongoing efforts of the General Services Administration (GSA) to ensure compliance with the AbilityOne Program through other procurement channels like GSA Advantage! and we recommend that similar oversight protocols be developed for the e-Commerce Portals program. This should include specific mechanisms to monitor and prevent the sale of Essentially the Same (ETS) items to federal government buyers.

To safeguard jobs at our NPA and within the AbilityOne Program, I urge GSA and the Office of Management and Budget to fully uphold the requirements of the Javits-Wagner-O'Day Act and FAR Subpart 8.7 in the design of the e-Commerce Portals program. It is important for the e-Commerce Portals program to include explicit responsibilities for the platform providers, sellers, and government buyers with regard to mandatory sources and the AbilityOne Program.

Thank you for considering this request and I look forward to continued dialogue as the program is implemented.

PUBLIC SUBMISSION

As of: 1/17/18 11:25 AM Received: January 16, 2018 Status: Pending_Post Tracking No. 1k2-90ye-d354 Comments Due: January 16, 2018 Submission Type: API

Docket: GSA-GSA-2017-0002

GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707

Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-DRAFT-0762

Comment on FR Doc # 2017-26964

Submitter Information

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Submitter's Representative: Chris Alsup

Organization: Dell EMC Federal

General Comment

See attached file(s)

Attachments

Dell EMC Letterhead Comments to GSA Comerc Marketplaces Docket 1-16-18

**Comments of Dell EMC Federal to Section 846/Procurement
Through Commercial e-Commerce Portals
GSA Docket Number: GSA-GSA-2017-0002**

Dell EMC Federal respectfully offers these comments on Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals, Docket Number: GSA-GSA-2017-0002. Dell EMC Federal supports the goals and objectives of this legislative and regulatory effort to develop multiple commercial online marketplaces that assures fair, equal and open access and competition for product sellers to federal government customers in the Department of Defense and in civilian federal agencies. This process is an important first step in reducing the cumbersome and sometimes protracted processes used for information technology acquisition. Dell EMC Federal fully supports the utilization of e-commerce for many of the information technology needs of the federal government.

There are, however, some important aspects of the acquisition of IT products and services that Dell EMC Federal believes need to be emphasized as the General Services Administration (GSA) and the Office of Management and Budget (OMB) begin the implementation process of Section 486. In some cases, the comments made below were voiced by Dell and/or others at the public meeting on this topic on January 9, 2018. We propose these comments for the record to both reemphasize those comments made at the public meeting and to expand upon them.

There should be multiple “Marketplaces”

- Federal government must contract with multiple commercial online marketplaces. To select only a few marketplaces, or to limit the marketplaces to only those which are extant today will fail to maximize the buying power of the federal government because of the contractual limits and conditions that can be placed on vendors offering products on those marketplaces which can discriminate against vendors or require the payment of fees in order to list products advantageously in the portal.
- The marketplace should offer multiple OEM brands to encourage fair competition and side by side comparison shopping.
- Dell EMC Federal recommends that the older government e-commerce portals (GSA Advantage!, GSA eBuy, GSA Global Supply, and the Federal Supply Schedules) which may use outdated technology be phased out as the envisioned commercial marketplaces managed by commercial providers come online
- The federal government should establish categories for marketplace portals. For example, the office supply portal should be separate from Enterprise Technology portal. Additionally, the online marketplace should accommodate different

business models in one portal: for example, PC as a service should be offered alongside PCs for purchase. Same is true for Cloud services.

Government should not charge the sellers to participate

- The “pay to play” requirement is accepted in the commercial space, but it should not be a condition for a potential supplier of goods or services to the federal government. Such requirements already limit the participation of small businesses in existing commercial marketplaces and/ or limit the visibility of a product or vendor in the commercial marketplace because other (usually larger) vendors can pay for “top-line” placements when product or service searches are entered.
- While nothing is free, and there will surely be costs to the federal government to establish these marketplaces, the savings from the utilization of these marketplaces should be significant. The cost of their creation should be a cost absorbed by the government; just as any other cost of procurement by the federal government is funded through annual appropriations to each federal agency today. The operational cost of these marketplaces however should be covered by a portion of the savings that is expected to be realized through their use. One of the prime motivations for moving to commercial marketplaces is to realize acquisition cost savings; therefore, the cost of the marketplaces should in practice offset only a small portion of the savings expected to be realized by the federal government.

Marketplace Handling of Order Management and Federal Acquisition Compliance Issues

- It is important that the marketplaces have the capacity to assure (in advance of any purchase from the marketplaces) that vendors in the marketplaces meet applicable federal contracting requirements and federal product security requirements such as:
 - Meeting federal preferences (when applicable or when preferable) such as minority business enterprise and women business enterprise requirements as well as service disabled veteran owned business preferences.
 - Meeting federal product security needs with Common Criteria, Internet Protocol Version 6 (IPv6), Federal Information Processing Standards (FIPS), National Institute of Standards and Technology Basic Input/Output Systems (NIST Bios), Security Technical Implementation Guide (STIG Hardening), Trusted Platform Module compliance (TPM), Department of

Defense Information Network Approved Products List (DODIN- APL) and Voluntary Product Accessibility Template (VPAT)

- The marketplaces should also assure the vendors meet supply chain compliance needs. For example:
 - [Dell EMC Federal \(and Dell Technologies generally\), requires suppliers](#) to comply with all applicable laws and regulations where business is conducted.
 - Dell Technologies suppliers are also expected to embrace high standards of ethical behavior and treat their employees fairly with dignity and respect, consistent with local laws and the [Electronic Industry Citizenship Coalition \(EICC\) Code of Conduct](#)

Lowest Price Technically Acceptable (LPTA) vs Best Value Estimate

- Each marketplace should have a common algorithm that establishes a scoring system or value for the total cost of ownership (TCO) of products or services available for acquisition. This common algorithm should calculate acquisition price, deployment costs, cyber protections/product security compliance, global service and support, supply chain conduct (EICC Audit) so that purchases have a clear understanding of what the total cost of a product or service entails.
- TCO elements for data center technology should also include the cost of power, storage cooling, facilities for storage and people cost. The IT industry has developed values for each of these items and the marketplace can readily calculate these costs so as to assure the purchaser is indeed receiving the best value for the government's needs.
- Finally, the Marketplace should also allow access to past purchaser ratings for supplier & product performance, so that buyers know when other federal government consumers have a great or a poor experience with a product or service.

Items Needing Further Evaluation

- There needs to be further clarification as to how the government assures that fair and open competition is maintained through the use of a commercial portal. For example, what will be the process to conduct bid protests of awards made through the portals? Will the federal government (the General Accountability Office?) conduct such protests? How robust will federal oversight of these commercial portals be to assure that fair and open competition is achieved in all procurements, regardless of volume or dollar value?

Dell EMC Federal appreciates the opportunity to offer these comments to the Section 846/ Procurement through Commercial e-Commerce Portals Docket. Dell EMC Federal supports the effort by OMB and GSA. However, Dell EMC Federal urges that that the implementation of these marketplaces adopt these suggestions.

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0790
Comment on FR Doc # 2017-26964

Submitter Information

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Phone: 2027705275

Fax: n/a

Submitter's Representative: Denis Dwyer

Organization: GovEvolve

General Comment

See attached file(s)

Attachments

FINAL GovEvolve Comments on OMB GSA e-Commerce Portals



Phone: 202-770-5275

Address: 2308 Mt. Vernon Avenue #707
Alexandria, VA 22301

January 16, 2018

**Comments of GovEvolve to Section 846/Procurement
Through Commercial e-Commerce Portals
GSA Docket Number: GSA-GSA-2017-0002**

GovEvolve, the leading advocacy association for small and medium-size businesses that provide information technology products and services to the United States government sees many improvements and advantages that could be realized the development of online marketplaces as proposed in Section 846 of the FY 2018 National Defense Authorization Act and as being implemented by the Office of Management and Budget (OMB) and the General Services Administration (GSA). Indeed the NASA SEWP program and the GSA's own government wide acquisition contracts (GWAC) are small steps in that direction.

GovEvolve has some concerns and questions which it believes needs to be addressed in the development of online marketplaces. Among these concerns and questions are:

- There should be multiple marketplaces to assure the widest possible competitive opportunities for vendors, especially small business vendors to the federal government.
- That the online marketplaces established under the legislation be able to assure that providers of products and services meet *and continue to meet* essential DoD qualifications such as:
 - Assurances of a secure product supply chain
 - Assurances that products offered on the online marketplace comply with the Trade Agreements Act
 - Compliance with the "Buy American" Act (when relevant) and any other relevant DoD prequalification requirements.
 - Compliance with other standard Department of Defense conditions.
- There needs to be a way to assure that the use of the online marketplace not become a substitute for acquisitions from small, disadvantaged, women and veteran owned businesses. Moreover, there needs to be a mechanism for setting aside some acquisitions of IT products and services on the online marketplace for small, disadvantaged, women and veteran owned businesses so that DoD agencies can use the online marketplace to meet their small business goals.

- Certain existing commercial portals require the payment of fees by suppliers of goods or services in order to “list” their products or services on the portal. In some cases, the availability of specific products or services is limited by the fees which a product supplier would pay. In other words, some products will pay for exclusive availability or top-line search results for their products through the portal, thus limiting potential competition for competing products, again, as it relates to small, minority, women, service-disabled veteran and veteran owned product and service providers. This practice could limit DoD access to product, service and price competition.

There may be a desire to leave some of these issues to the commercial online marketplace manager or owner; however, GovEvolve believes that in the absence clearer statutory direction, there will be a reliance on the commercial portal to determine the “rules of competition” that could disadvantage small business providers, not only through the payment of listing fees but also rules that may require the demonstration of a threshold volume of sales in other marketplaces - be they virtual marketplaces, business-to-business or business-to-consumer transactions - as preconditions to access to the online marketplace. For these reasons, GovEvolve respectfully requests that OMB and GSA implement the improvements proposed here by clarifying these issues in directly in their implementing requirements and processes.

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0789
Comment on FR Doc # 2017-26964

Submitter Information

Name: David Grogan

Address:

American Booksellers Association
333 Westchester Ave, S202
White Plains, NY, 10604

General Comment

Thank you for providing the Advocates for Independent Business the opportunity to express our thoughts on the implementation of the purchasing platform as outlined in Section 846 of the National Defense Authorization Act of 2018.

On behalf of our independent retailer and business members across the country, we believe it is crucial that the general program design take into account the positive fiscal impact that shopping locally has on the economy. Small businesses are the engine of our national economy; so, a program that could facilitate purchasing at the local level would be a win-win for the General Services Administration (GSA) and communities throughout the country.

In regard to the number of contracts awarded, we oppose exclusive contracts and think it would inhibit competition if the GSA limited any overlap of product categories and/or awarded a single portal provider a particular product category. We also urge GSA to factor in more than simply a product's retail price. There are other factors to consider, whether it is shipping costs, sales tax collection, time of delivery, or quality of customer service. We believe that the procurement process should provide an agent a choice, so that the GSA can find the best value, as opposed to simply the cheapest option.

It is widely known that Amazon lobbied vigorously for Section 846 in the hopes that it would hand them significant government purchasing power. And we remain concerned that, in the end, this could still be the case since Amazon is the leading e-commerce portal. Legal expert Lina Khan, Director of Legal Policy at the Open Markets Institute and a visiting fellow with Yale Law School, has warned that the "Procurement through Commercial e-Commerce Portals" provision could very well crown Amazon as an official gatekeeper to government purchasing. If that were to become the case, government spending that

was "previously dispersed across hundreds of distinct companies," would, in turn, "now instead all be channeled through one company, with Amazon collecting a tax," Khan noted.

This is why we stress that implementation of the procurement process take into account how important small businesses are to job creation and the fiscal health of states and communities nationwide.

Bricks-and-mortar retailers employ 47 people for every \$10 million in sales, according to an analysis by the Institute for Local Self-Reliance of U.S. Census data. (Excluding chains and looking at just independent businesses, the figure is even higher 57 jobs.) But Amazon employs only 14 people per \$10 million in revenue. As Amazon grows and takes market share from other retailers, the result is a decline in jobs.

With that in mind, as implementation is rolled out, we do hope it is designed with these figures in mind.

We also urge the GSA to look closely at the conflict-of-interest that's inherent in both administering a purchasing platform and being a direct retailer on that platform. In particular, we have concerns about how companies that both administer platforms and sell directly on them use the data generated by the platform, and concerns about who owns and controls that data. As Sec. 846 is implemented, we urge the GSA to disallow any company that administers the e-commerce portal from also being a direct retailer through that portal.

We would be happy to consult further with you on this issue at your convenience.

Sincerely,

Stacy Mitchell, Coordinator
Advocates for Independent Business
Co-director, Institute for Local Self-Reliance

David Grogan, Director, ABFE, Advocacy and Public Policy
American Booksellers Association

Kimberly Mosley, CAE, CPE, President
American Specialty Toy Retailing Association

Mark Simon, Executive Director
Brixy, Inc (representing independently owned baby gear and accessory retailers)

Dan Tratensek, Executive Vice President
North American Retail Hardware Association

Terry Schalow, Executive Director
Running Industry Association

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0788
Comment on FR Doc # 2017-26964

Submitter Information

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Organization: WESCO International, Inc.

General Comment

Please accept this letter in response to the request for comments published in the Federal Register on December 15, 2017. As some noted during the public meeting on January 9, 2018 at GSA's Central Office, the government's purchases of commercial off the shelf (COTS) items using public funds involve considerations that are different than transactions involving only commercial parties:

Fees - The estimated \$50 billion COTS market across the government has many sellers vying for business in this area, and the fee structures of some commercial e-commerce portals would not make sense to apply in this case. In some on-line marketplaces, portal providers charge sellers 15% to sell their products using the on-line portal. If the government endorses such a fee structure for its \$50 billion purchases, it would create a pay to play scenario in which sellers would be forced to pay high access fees (or pass them along in the form of higher product costs) in order to sell to the government, and the on-line portal provider(s) would receive ~\$7.5 billion for providing a technology platform. All fees charged by the portal provider(s) should be transparent to all parties and to the public and commensurate with the value provided and function performed.

Open to Qualified Sellers - To ensure fair competition, e-commerce portals should be open to all qualified sellers, as determined by the government, and the portal provider(s) should not exclude any qualified seller or favor one over another.

Data Use - The portal provider(s) should not be permitted to use transactional data for any purpose other than to process transactions. In particular, the portal provider(s) should not be able to use the data to favor one seller over another, or for the portal provider to use itself, as a seller, to compete against other marketplace sellers.

National Security - The concentration governmental purchasing information in the hands of private sector entities poses a security risk, because information about governmental operations could be determined through access to purchasing patterns and delivery information. The portal provider(s) should be responsible for any data breaches from access to their systems, either via access by e-commerce portal employee(s) themselves or by unauthorized breaches of their systems.

Thank you for your consideration.

Sincerely,

Diane Lazzaris
WESCO International, Inc.

PUBLIC SUBMISSION

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0787
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

Thank you for the opportunity to provide comments on the Procurement Through Commercial e-Commerce Portals initiative.

Thermo Fisher Scientific is the world's largest analytical instruments and scientific products supplierwe are the world leader in serving science. With more than 100 years of experience working with the U.S. Government to support scientific research, we can provide a unique perspective on the complexities of procuring scientific research instruments and supplies.

Please find attached our comment letter and we look forward to answering any questions.

Attachments

Thermo Fisher Scientific-NDAA Sec 846 Public Comments Letter



Thermo Fisher Scientific
Customer Channels
168 Third Avenue
Waltham, MA 02451
www.thermofisher.com

January 16, 2018

U. S. General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street, NW, 2nd Floor
Washington, DC 20405-0001
ATTN: Lois Mandell

Re: PROCUREMENT THROUGH COMMERCIAL e-COMMERCE PORTALS
Notice –MV-2017-05; Docket No. 2017-0002; Sequence No. 25

Submitted via: <http://www.regulations.gov>

Dear Lois:

On behalf of Thermo Fisher Scientific, I would like to thank GSA for hosting the public town hall on January 9th and providing the opportunity to submit comments on Section 846 of the FY 2018 National Defense Authorization Act. While the panelists provided a wide range of views for the GSA to consider, we can provide a unique perspective on the complexities of procuring scientific research instruments and supplies.

Thermo Fisher Scientific is the world's largest analytical instruments and scientific products supplier—we are the world leader in serving science. With revenues of more than \$20 billion and approximately 65,000 employees globally, our mission is to enable our customers to make the world healthier, cleaner and safer. We are headquartered in the U.S. and approximately half of our employees are based here.

We help our customers accelerate life sciences research, solve complex analytical challenges, improve patient diagnostics, deliver medicines to market and increase laboratory productivity. Our customers include academic and university labs, large reference labs, hospitals, biotech and pharmaceutical companies and key Federal government entities like the Department of Defense, National Institutes of Health and Food and Drug Administration. We offer an unmatched combination of innovative technologies, purchasing convenience and comprehensive services.

Thermo Fisher is both a product manufacturer and a distributor of scientific research products. We operate two robust commercial e-Commerce sites: thermofisher.com and fishersci.com. We have over 850 thousand registered users and 65 million visitors who browse over a million products sold through these sites. We sell over \$4 billion worth of products via e-Commerce. Our customers purchase products both directly through our existing commercial portals (where we identify products approved for government purchasing), as well as through the GSA Advantage portal.

While we agree with some of the comments made by the town hall panelists, with more than 100 years of experience working with the U.S. Government to support scientific research, the



following comments are some ways that the scientific products industry is different from mainstream commodities.

- In the scientific research market, research integrity is critical. Our customers use products to research life-threatening diseases and to develop products that will lead to better health outcomes. Researchers must be able to reproduce results according to the most stringent standards for accuracy. Products need to be authentic and fit for use; specimens must be maintained at the right temperatures, often in very specific temperature ranges. If a protocol is violated, decade's worth of experimental data may be lost or compromised. Hazardous chemicals need to be safely handled and products need to be delivered in a specific time window to ensure product integrity. Therefore, it is critical to understand that many scientific products have purpose built supply chains that ensure quality, integrity and customer satisfaction.
- Scientific product selection is not as straight-forward as basic supplies. Researchers rely on scientific publications, deep technical product descriptions and the expertise that our sales and customer service teams routinely provide to enable researchers to select the necessary products to achieve their goals. Innovative and evolving technologies like IoT, the cloud and Big Data are part of the new procurement eco-system and will be tightly integrated into the scientific discovery process. Connecting their lab systems to their purchasing workflow improves both innovation and productivity. Therefore, to ensure best value to the government and taxpayers, GSA should include into the portal selection criteria, the portal providers' ability to provide services integrated with and beyond the ordering interface.
- The lack of relevant information, product aggregation, product substitutability and supplier negotiated pricing and terms in an e-Marketplace or metasearch engine will likely result in higher prices to the U.S. Government for many products. First, the scientific selection process is not conducive to an e-Marketplace or metasearch which sell primarily commodities. Second, e-Marketplace dynamics designed to obtain the lowest price for commodity goods offered by a large number of similarly situated suppliers have less utility with respect to technically differentiated products that may be offered by only one or a few suppliers. Third, pre-negotiated agreements with the government on pricing, delivery, service agreements, volume discounts and warranties, formalized in a Federal Supply Schedule, ensures the best value for the government.
- We believe a select group of scientifically-focused e-Commerce sites will be the best solution for researchers. The Fisher Scientific e-Commerce portal provides access to products from approximately 9,000 scientific suppliers in addition to products offered by Thermo Fisher Scientific. The Fisher Scientific channel is a strategic partner with many suppliers, because we provide the full-range of services they need to support their products. This is a proven commercial model.

Thermo Fisher Scientific prides itself in supplying quality scientific products to the U.S. government at the best value while complying with government contracts requirements and ensuring procurement integrity. We look forward to continuing to serve the scientific community, and thank you for your consideration of our comments.

Sincerely,

Greg J. Herrema
Senior Vice President and President, Customer Channels

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0786
Comment on FR Doc # 2017-26964

Submitter Information

Name: Tataga Hagat
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Hagat, GU, 96928

General Comment

See attached file(s)

Attachments

Comments for the ecommerce online platforms

January 15, 2018

Comments from Mr. Tataga Hagat, a U.S. citizen.

Small Business Act Compliance.

Use of an online commercial platform will still require full compliance with Section 15(j) of the Small Business Act that amended 15 U.S.C. by adding §644(j). This section mandates that all federal agencies **SHALL** exclusively reserve all purchases, task orders, delivery orders, and contracts for supplies and services between the micro-purchase threshold (\$10k) and the Simplified Acquisition Threshold (\$250k) for small businesses. This mandatory statutory requirement gives small businesses a priority preference above Federal Prison Industries, AbilityOne (NIB and Source America), Federal Supply Schedules, Government Printing Office, and Large Businesses. There can be no exception to this rule and the federal government should not waive or make this statute inapplicable to the ecommerce online platforms.

15 U.S.C. §644(j) Small business reservation

(1) Each contract for the purchase of goods and services that has an anticipated value greater than \$10,000¹ but not greater than \$250,000² shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

This specifically states that all task orders, delivery orders, and contracts, for the purchase of goods and services that has an anticipated value greater than \$10,000 but not greater than \$250,000 shall automatically be reserved exclusively for small business concerns unless the agency, Government Purchase Card holder, or contracting officer is able to **disqualify** the automatic exclusive reservation if the agency, Government Purchase Card holder, or contracting official is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

The Small Business Administration is the only federal agency with deference granted by statutory authority to interpret the unambiguous language under 15 U.S.C. §644(j) and Section 15(j) of the Small Business Act and promulgate

¹ The 2018 NDAA increased the micro-purchase threshold to \$10,000 for civilian agencies. The micro-purchase threshold remains the same for DoD.

² The 2018 NDAA increased the Simplified Acquisition Threshold to \$250,000 for civilian agencies and DoD.

regulations to implement the intent of the President and the Congress. On January 5, 2012, Mr. John Klein, SBA General Counsel, rendered legal opinion on the interpretation of 15 U.S.C. 644(j) for a GAO Protest of FitNet Purchasing Alliance, 8-406075. Specifically, Mr. Klein stated

In light of the precedent set by GAO and the courts, we believe that the statutory language “shall be reserved exclusively for small business concerns” set forth in 15 U.S.C. §644(j) is clear and unambiguous, and there is no discretion to interpret the statutory requirement as anything other than mandatory. As GAO has ruled in Mission Critical Solutions and Aldevra, the “shall” statutory language has specific meaning.

On June 16, 2016, the Supreme Court of the United States (SCOTUS) rendered a decision that supports John Klein’s legal opinion on the statutory language “Shall”. SCOTUS made the following statements in landmark Kingdomware decision.

“The word “shall” usually connotes a requirement, unlike the word “may,” which implies discretion.”

“When a statute distinguishes between “may” and “shall,” it is generally clear that “shall” imposes a mandatory duty”

“recognizing that “shall” is “mandatory” and “normally creates an obligation impervious to judicial discretion”

For every instance a government buyer utilizes the online commercial platform to purchase a commercial item or items with a dollar value between the micro-purchase threshold and SAT, the government buyer shall purchase the commercial item or items from a small business as mandated under 15 U.S.C. §644(j) or Section 15(j) of the Small Business Act.

Compliance will increase small business participation and promote job creation to support the increase in sales.

Recommendation. The online platform should allow each vendor to display their business size and applicable socio-economic status(es) that will allow government buyers to comply with §644(j) as well as Veterans First at the VA and Native American First at the Department of Interior.

Compliance with BAA and TAA.

Full compliance with the Buy American Act and Trade Agreements Act for all online vendors including AbilityOne, UNICOR, large businesses, small businesses.

Compliance with the Vets First Act.

The VA must comply with the statutory requirements of 38 U.S.C. 8127 and 8128 when utilizing the online ecommerce platforms. The VA must also comply with the requirements of the SCOTUS Kingdomware decision that the VA SHALL give veteran small businesses priority over all other preferences, mandatory or not.

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0785
Comment on FR Doc # 2017-26964

Submitter Information

Name: Brad Wiens

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General Comment

Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals

We are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals. The Lighthouse for the Blind, Inc. is one of one hundred National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne Program and committed to providing employment opportunities for people who are blind, DeafBlind, and blind with other disabilities.

As a member of the federal AbilityOne Program, the Lighthouse employs 240 employees who are blind (out of our 450 total) at eleven locations on the West Coast. We manufacture products, operate seven AbilityOne Base Supply Centers (BSCs), and hold a dozen other contracts found on the federal Procurement List (PL). We create quality employment opportunities for people who are blind, pay competitive wages, and provide medical, dental, vision, and retirement benefits (to name a few) for employees.

As you know, goods and services on the PL are mandatory for all federal agencies to purchase. Moving to an online marketplace to improve efficiencies and the customer experience can help ensure the continued viability of the AbilityOne Program if the marketplace is designed to ensure all federal buyers comply with existing federal laws such as the Javits-Wagner-O'Day (JWOD) Act. The online marketplace can, and must, prevent federal buyers from circumventing procurement rules by buying Essentially-the-Same (ETS) items from non-AbilityOne sources. ETS items should not be sold by unauthorized distributors to federal customers and they negatively impact employment opportunities for people who are blind whose

primary goals are to lead independent lives in careers that enable them to contribute to the world around them. To that end, we have reviewed a number of posted comments which address this issue more completely and agree with those comments.

The BSC distribution channel is very important to the military customer. BSCs offer easy access to both AbilityOne products but also other supplies needed to perform their jobs. We understand National Stock Numbers (NSNs) and MIL-SPEC requirements. In fact, our agency produces the one-quart canteen with the biological warfare cap, which prevents contamination in the event of chemical warfare. What would happen if soldiers were directed to buy these items on Amazon or Overstock? There are multiple suppliers that make a similar version but it will not protect the lives of our soldiers. NIB agencies understand these requirements. During the Gulf War, commercial vendors were trying to sell non-military standard flight suits to our airmen. With the shiny gold metal zippers that adorned these suits, our airmen would have been easily spotted and targeted by enemy combatants. Decades of experience are in this program and will be lost if turned over to an "open market". There are several items on Amazon that falsely claim to meet all military specifications, potentially putting lives at risk.

We believe that improving the buying experience for our federal customers is an important goal, as is the goal of providing an advantage in federal procurement for people who are blind or have other significant disabilities. Allowing this drive for efficiency to replace the goal of providing quality employment for a population of people where 70% of the working-age group suffers unemployment through no fault of their own would be a lost opportunity. The role of BSCs in providing employment to people who are blind or visually impaired through contracts with NIB and the AbilityOne Program must remain a viable program. Nationally, the 130 BSCs provide approximately 300 jobs for persons who are blind, many of whom live in remote areas where employment opportunities for people with disabilities are non-existent. Our non-profit agencies entered into the BSC distribution channel with long term agreements. Many agencies have spent capital funds building physical stores on federal installations to support this program. Through the BSC program, the Lighthouse is not only providing retail jobs for people who are blind, but is also supporting people who are blind who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

You can improve efficiency while ensuring compliance, quality, and employment opportunities (and, thereby, tax revenue) through this online marketplace. All objectives are equally important.

Sincerely,

Bennett Prows
Chairman, Board of Trustees
The Lighthouse for the Blind, Inc.

PUBLIC SUBMISSION

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Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0784
Comment on FR Doc # 2017-26964

Submitter Information

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Phone: 301-717-7251

General Comment

Coupa Software has provided our comments and suggestions through the attached file.

Attachments

Coupa Software Comments - Sect 846 - 1-16-18

Comments on Section 846 of the National Defense Authorization Act
Coupa Software
January 16, 2018

The implementation of Section 846 of the National Defense Authorization Act should be a transformative event for Federal government procurement. This event will require a dynamic shift in the way the Federal government procures goods and services, but this shift does not need to dramatically alter the existing policies, procedures and transparency/visibility the Federal government must employ.

The opening statement of Section 846 states that this legislation is being done for the purposes of enhancing, competition, expediting procurement, enabling market research and ensuring reasonable pricing. These factors are not currently successfully employed in the Federal government, so there needs to be a thorough understanding of the challenges ahead and what can be employed to address those challenges. Commercial industries have been doing this successfully for many years using the best commercially available tools and business practices.

The critical factors for the success of this program are 1) inclusion of a broad and diverse portfolio of on-line marketplaces and suppliers; 2) speed of implementation to ensure the financial benefits associated with Section 846 are achieved in a timely fashion; 3) ensure a clear definition of a marketplace provider (e-commerce provider) and an on-line portal provider for multiple e-commerce marketplaces (e-procurement provider); 4) adoption of best commercial practices using the best commercially available e-procurement solution(s) while adhering to the required policies and procedures for Federal government procurement; and 5) ensuring visibility/transparency in the procurement process with full audit capabilities.

Item 1 – Inclusion of Multiple Marketplace Providers: In order to ensure an appropriate level of competition, guard against pricing issues, and provide the best available products and services to the Federal government, the implementation plan must not restrict the number of e-commerce providers. Current systems employed in the commercial marketplace allow buyers to select from a number of e-commerce providers while presenting the information needed to ensure the best goods and services are acquired.

Item 2 – Speed of Implementation: Section 846 outlines multiple phases to implement the program. The Phase I plan should provide the means to rapidly implement Phase II and III of this initiative to ensure that measurable benefits are achieved quickly. One way to achieve the speed of implementation and full understanding of the challenges ahead is to include the acquisition and deployment of one or more pilot programs.

Item 3 – Definition of E-Commerce vs. E-Procurement Providers: E-Commerce providers are those companies who provide their goods and services via websites (on-line marketplaces). In general, these providers – while giving their customers the ability to effectively “shop” for goods and services - do not provide the level of compliance, workflow, and visibility required by the Federal government. E-Procurement providers are those companies who provide the solution(s) to ensure the appropriate levels of security, compliance, workflows, visibility and fraud and abuse detection/prevention needed to successfully implement Section 846.

Item 4 – Adoption of Best Commercial Practices: The Phase I plan for the implementation of Section 846 should clearly identify the need to transform and adopt the best commercial business practices in the industry today. The evaluation of best rated e-procurement solutions can be accomplished by reviewing the latest market research and industry analysts reports (such as Gartner, IDC, and Forrester). As part of the evaluation of these solutions and their associated best business practices, the establishment of pilot operations or proofs-of-concept should be included in the 90 day plan.

Item 5 – Ensure Visibility/Transparency: E-Commerce providers may not provide the level of visibility required to ensure transparency and compliance with Federal government procurement policies, mandates or procedures. E-Procurement providers generally provide the analytics, reporting, compliance (budgetary and operational) and workflows necessary for the successful implementation of Section 846. These systems also provide full audit capabilities and in some cases, Actionable Intelligence (provided by Coupa Software), which will provide Federal procurement officers/executives with real time spend visibility and management of all on-line procurements.

Another point of consideration is the solutions available today and/or provided by the Federal government (such as GSA Advantage). The comments contained here do not advocate the replacement of these systems, but the augmentation of the available portfolio of solutions to provide the Federal government with the best of the commercially available solutions with the best Federally provided solutions. However, there must be caution when considering the use of existing solutions. In paragraph (c)(2)(A) of Section 846, there is a

reference to ensuring the commercial portals function with the "standard terms and conditions of the portals by the Government". The paragraph then states that there should not be a "degree of customization" that would create a "Government-unique" portal. This type of customization may not be the best approach and the Federal government should work to implement solutions that give them what they need WITHOUT customization.

In summary, the implementation of Section 846 should be viewed as a transformation in Federal procurement and:

- a) The 90 plan should include a clear statement of what needs to be accomplished, including any policy issues, definitions of success, and the measurable goals that should be attained.
- b) The Federal government must be willing to implement the best commercially available solutions - not a retrofit or customization of existing solutions. Cloud-based, SaaS solutions are the fastest and best paths to success. The solutions will need to combine the openness of marketplaces with the controls of an e-procurement platform.
- c) The Federal government must implement solutions that will provide them with the compliance they require - including budgetary compliance. The solutions must also provide a method for fairness where not only would the major e-commerce providers be accessed, but also the existing portfolio of COTS providers under contract and small, disadvantaged, minority, women owned and minority businesses should be properly represented.
- d) Visibility - namely SPEND MANAGEMENT - is critical to the successful implementation of this program.
- e) A path to ensuring success is through an Innovation Lab (pilot or proof-of-concept environment) - either managed by the Federal government (i.e. GSA) or through an organization such as the Public Spend Forum.

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Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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General Comment

See attached for comments

Attachments

Procurement through Commercial e-Commerce Portals



General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

January 13, 2018

Re: Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals

Dear Ms. Mandell:

On behalf of **South Texas Lighthouse for the Blind** we are submitting comments on the General Services Administration's (GSA) proposal to establish a program to procure commercial products through commercial e-commerce portals.

In order for the program to preserve thousands of American jobs that benefit people who are blind or visually impaired, it is imperative the GSA comply with mandates set forth by the Javits Wagner O-Day Act (JWOD), 41 U.S.C. Section 46, et seq. and Federal Acquisition Regulations (FAR) 8.002 and 8.7. For this to occur, the initial statement of work and specifications must explicitly state that compliance, tracking and reporting requirements be part of the initial design. By including block and substitute techniques, this move will safeguard and prevent unwarranted purchases of Essentially the Same (ETS) and Commercial Off the Shelf (COTS) items intended to replace the AbilityOne Procurement List.

It is inexcusable that under current procurement policies and procedures, government purchasers are not sufficiently trained or have incentives, such as measuring and reporting AbilityOne supplies and services, to comply with statutes and regulations. Every time federal purchasing practices justify improper online purchases by micro purchase thresholds and specifically purchase Essentially the Same (ETS) supplies, it has a detrimental effect on **67 of South Texas Lighthouse for the Blind** employees and 45,000 others around the United States in manufacturing and retail positions. It reverses positive progress made by the AbilityOne Program – a program expressly authorized by Congress to address the urgent need to provide employment for people who are blind and, beginning in 1971, those with significant disabilities.

The JWOD Act is very clear in its mandatory requirements that all federal agencies must purchase specified supplies and services from nonprofit agencies in the AbilityOne Program. The law gives the AbilityOne Commission the authority to oversee participating nonprofit agencies and provide the government with a Procurement List prioritized by the JWOD Act and FAR.

To remain competitive, AbilityOne nonprofit agencies and the AbilityOne Commission periodically review the Procurement List to ensure fair and reasonable prices for supplies and services. In addition, the AbilityOne Commission and affiliated nonprofit agencies are monitored for compliance with applicable regulations and



pricing guidelines by the Office of the Inspector General. Supplies and services on the AbilityOne Procurement list are considered fulfillment of the federal government's socio-economic programs.

South Texas Lighthouse for the Blind is one of 100 National Industries for the Blind (NIB) affiliated agencies across the nation that is part of the AbilityOne program and committed to providing meaningful employment opportunities that improve the quality of life for people who are blind or visually impaired. It has been our mission since **for more than 50 years**. Through Base Supply Centers (BSC) operated at **6** military bases in **4** states with contracts through NIB and the AbilityOne program, **South Texas Lighthouse for the Blind** is not only providing retail jobs for people with vision loss, but is also supporting people who are blind and significantly disabled who manufacture many of the quality and cost-effective AbilityOne products sold through the BSCs.

AbilityOne BSCs, like GSA stores, provide a wide array of AbilityOne and Commercial products to federal and military personnel that are compliant including, but not limited to the following:

1. **Office Products**
2. **Janitorial and Sanitation supplies**
3. **Personal Safety and equipment**
4. **Furniture**
5. **Tools and Maintenance and Repair**
6. **Tactical and deployment gear**

Our Base Supply Centers offer more than exceptional customer service, we also offer:

1. **Flexible and tailored inventory meeting the mission of the base location**
2. **An easy to navigate website with the very same standards as the BSCs, keeping compliance with ETS**
3. **Access to hundreds of manufacturers and wholesalers direct, saving the customer time and money**
4. **Same day delivery for many products**
5. **On line ordering made simple, easy and ETS free**

We strongly believe that ETS items should not be sold by authorized distributors under any circumstances to federal customers. ETS sales negatively impact employment opportunities for people who are blind or visually impaired whose primary goals are to lead independent and fulfilled lives in careers that enable them to contribute to the world around them.

All of the BSCs are regularly audited for ETS compliance as well as competitive pricing standards set by GSA. This audit also includes our website 1storesolutions.com.

As an authorized AbilityOne distributor we provide solutions to include both AbilityOne mandatory items as well as commercial items to the customers with the task of purchasing as well as the end user. With more than 140 BSCs serving both the federal and military customer, we have buying power allowing us to pass on the savings.

The JWOD Act has forever changed the lives of people who are visually impaired by replacing dependency on federal programs with lifestyles of independence. The JWOD Act and FAR statutes and regulations have saved



South Texas Lighthouse for the Blind

MV-2017-05 Comment #60

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taxpayers millions in welfare costs while federal procurement policies and procedures that circumvent federal statutes and regulations only contribute to the current 70 percent unemployment rate for people who are blind.

It is our duty to follow the law and make sure the program to procure commercial products through commercial e-commerce portals complies with mandates set forth by the JWOD Act and FAR.

Sincerely,

Nicky Ooi
President/CEO
South Texas Lighthouse for the Blind
Nickyo@sotxlighthouse.org

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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General Comment

The attached comments in response to GSA's request for comments on the Procurement Through E-Commerce Portals notice are submitted on behalf of my client, FedBid, Inc.

Attachments

FedBid Comments to GSA E-Commerce FINAL

FedBid Comments to the General Services Administration
[Notice-MV-2017-05; Docket No. 2017-0002; Sequence No. 25]
Procurement Through Commercial E-Commerce Portals

Thank you for the opportunity to provide comments in response to GSA's Request for Comments on the development of commercial e-commerce portals as required by Section 846 of the FY 2018 National Defense Authorization Act.

FedBid is the leading provider of commercial e-commerce solutions to the federal government today via a dynamic sourcing platform used by more than 70 agencies and commercial enterprises. In FY 2016 federal agencies made more than 19,000 contract awards totaling more than \$1.1 billion using the FedBid platform. FedBid's commercial e-commerce platform provided the government with savings of nearly \$150 million in FY 2016 alone, while helping agencies enhance small business utilization. FedBid's unique experience working with the federal government put FedBid in a unique position to be a partner with GSA as it looks to develop a commercially-oriented e-commerce portal as required by the NDAA.

The GSA Request for Comments Notice asked for comments in three main areas: 1) general program design, 2) buying practices, and 3) implementation. Our comments below are primarily aimed at the general design of the program because we believe that until some of the fundamental program design issues are addressed, it is premature to talk about agency buying practices and implementation of the program.

General Program Design

Section 846 of the FY 2018 NDAA Conference Report language is very clear that the Armed Services committees expect the new e-commerce platforms to be developed and awarded in a competitive manner and that there are to be "multiple contracts, with multiple e-commerce portal providers." Achieving this will be critical to the long-term success of the program, while ensuring multiple options for agency buyers.

Key scope question: Definition of "commercial e-commerce portal"

The language in the NDAA defines an e-commerce portal as those that are "widely used in the private sector and have or can be configured to have features that facilitate the execution of program objectives." The language further defines an acceptable portal as a "commercial solution providing for the purchase of commercial products aggregated, distributed, sold, or manufactured via an online portal" The language in the conference report also establishes that the portal cannot be managed by the Government or designed for the primary use by the Government, stating "the term 'commercial e-commerce portal'...**does not** include an online portal managed by the Government for, or predominately for use by, Government agencies."

The definition established in the conference report does not adequately define what constitutes a "commercial e-commerce portal" and as such is open to interpretation, while leaving many questions unanswered. The term "e-commerce portal" is an out of date term in commercial procurement processes, which will make it more challenging for GSA to develop a clear definition for potential competitors. For instance, there are neutral "marketplaces" that allow manufacturers and distributors to present their good for purchase in an economically neutral way, often through a transaction fee if a

good is purchased. Alternately, some “marketplaces” are pay-for-placement businesses, where economics not often transparent and seldom neutral.

Before GSA moves forward with this program, we believe it is critical that they adequately define what is meant by “commercial e-commerce portal” and consider updating references to this portal to terms that are more widely-used in the commercial sector today.

Key scope question: Above or below the micro-purchase threshold?

The key open question about the program scope is what type of purchasing should be considered in scope and how it will comply with the FAR. GSA is likely weighing the trade-off between complexity and value in the pilot stage.

The language in the conference report establishes that no procurement conducted through a commercial e-commerce portal established under the legislation shall exceed the simplified acquisition threshold (SAT) as established in 41 USC, Sec. 134 (increased to \$250,000 by Section 806 of the 2018 NDAA). While this guidance is helpful, it is in no way sufficient to establishing the purchase thresholds that will govern the program going forward. We offer the following for your consideration related to the value of using the portal for purchases above and below the micro-purchase threshold.

Micro-Purchase Only:

If the scope is limited to purchases under the micro-purchase threshold, many of the challenging FAR restrictions are avoided and the implementation is nearly trivial since commercial e-commerce platforms are in-use today for micro-purchases. However, the value of such an implementation is limited and would not represent a meaningful transformation of purchasing practices.

Above Micro-Purchase Threshold but below the SAT:

If the scope extends to include purchases above the micro purchase threshold, the complexity of the program expands dramatically. The NDAA does not establish any relief from the FAR processes that govern purchasing practices above the FAR. There are only a few operational commercial marketplaces that currently successfully navigate the intersection of the FAR and commercial buying practices. Commercial marketplaces that do not currently account for FAR and GSA practices will put the end-buyer (1102) in a challenging position that enables them to source goods from the portal only to find later in the procurement process that they are not suitable for award (e.g., non in SAM, on the EPLS). Commercial e-Marketplaces that natively account for FAR compliance above the micro-purchase threshold, such as FedBid Marketplace, present a pragmatic path forward on implementation of Section 846.

At the earliest opportunity, GSA should be specific about whether the pilot will include purchasing items above the micro-purchase threshold. If it does include purchases above a micro-purchase, a full delineation of use cases and the corresponding FAR compliance needs to be mapped prior to competition of the pilot.

Piloting “multiple” proven commercial solutions

This is critical and GSA must ensure that robust competition occurs among multiple existing commercial providers that can fulfill the need for FAR-compliant commercial purchasing platforms. It is quite likely that the best value to the government will be found by creating a network of e-commerce portals deployed as a result of this effort.

In meeting these objectives, GSA should leverage existing e-commerce providers to the greatest extent practicable, particularly those that currently provide services to federal agencies in meeting the requirements set forth by the NDAA. Those e-commerce providers that currently do business with the federal government have already developed standard terms and conditions, implemented FAR compliant systems, and integrated with existing government acquisition platforms.

Achieving these broad goals will require considerable acquisition tradecraft. Ensuring a level playing field amongst small, medium and large portal providers will be essential in this process. The proper mix of commodity goods and services available through the portal at the outset will be key to its success.

Portal providers must be incentivized to participate in the program with a transparent, competitive remuneration process. Commercial e-Commerce platforms have a wide array of fee models, which include a blend of direct fees to the buyers (government), fees charged to suppliers to participate in the platform (e.g., catalog placement fees, etc.), and fees charged to suppliers only if orders are placed (e.g., commissions). Each type of fee within a marketplace has the potential to have a material impact on the competitive supply base available to the government and the fully-loaded costs of using the platform. GSA should require transparency on the fee structure to the government and between the marketplace and suppliers presented on the marketplace. Without sufficient transparency, the marketplace will be in a position where it can limit competition, extract usurious fees from suppliers, or create a non-level competitive environment without the government being aware of the dynamics that may be limiting competition.

Thank you for the opportunity to provide comments on this important initiative. It is critical that GSA get the general program design right, ensuring a competitive marketplace where multiple vendors can provide multiple solutions to best meet the government's needs. We look forward to working with you as this initiative moves beyond its initial phase as we have experience and expertise in delivering e-commerce solutions that we believe the government will find valuable.

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0781
Comment on FR Doc # 2017-26964

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General Comment

Thank you for accepting formal comments from National Industries for the Blind (NIB) on the first implementation phase outlined in Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement Through Commercial e-Commerce Portals. NIB's comments are attached.

Attachments

NIB Comments to GSA_Final

January 16, 2018

U.S. General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street NW, 2nd Floor
ATTN: Lois Mandell
Washington, D.C. 20405-0001

Procurement Through Commercial e-Commerce Portals (Federal Register Number 2017-26964): Comments from National Industries for the Blind

Thank you for accepting formal comments from National Industries for the Blind (NIB) on the first implementation phase outlined in Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, *Procurement Through Commercial e-Commerce Portals*.

NIB welcomes the opportunity to participate in any initiative to improve federal acquisition of commercial items. With thoughtful and deliberate implementation, e-commerce portals have the potential to streamline federal government acquisition while creating economic growth for private industry and strengthening socioeconomic programs that support the federal marketplace.

As directed in the Federal Register notice, NIB used the focus areas and questions provided by GSA and OMB as a framework for this submission. While each question is not answered specifically, we incorporated our perspective where applicable.

I. BACKGROUND

NIB's mission is to enhance the personal and economic independence of people who are blind, primarily by creating, sustaining, and improving employment. NIB is one of two central nonprofit agencies that help administer the AbilityOne® Program, authorized by the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §8501-8506).

In accordance with 41 CFR §51-5.3, contracting activities are not permitted to purchase commercial items that are deemed essentially-the-same (ETS) as commodities on the federal Procurement List. Further, 41 U.S.C. §8504(a) provides that any federal agency procuring a product or service on the Procurement List "...shall procure the product or service...in accordance with regulations of the Committee..." In other words, the statute requires federal agencies to follow U.S. AbilityOne Commission regulations—including regulations prohibiting the purchase of commercial ETS items.

The AbilityOne Program requirement is codified in the Federal Acquisition Regulation (FAR) subparts 8.02, *Required Sources of Supplies and Services*, and 8.7, *Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled*.

The AbilityOne Program was established by Congress 80 years ago to harness the purchasing power of the federal government to create employment opportunities for people who are blind or have significant disabilities. The Program delivers products and services to federal customers while sustaining meaningful employment for more than 46,000 people who are blind or have significant disabilities across the country.

Thousands of quality products are available through the AbilityOne Program, ranging from SKILCRAFT® office supplies to environmentally friendly cleaners. These products are available to federal purchasers through many different channels, including more than 300 U.S. AbilityOne Commission-authorized distributors, many of which are woman-owned, minority-owned, and service-disabled/veteran-owned businesses; AbilityOne Base Supply Center™ stores; and e-commerce platforms such as GSA Advantage, GSA Global Supply, and FedMall.

America faces a critical issue with nearly 70 percent of people who are blind not working. The AbilityOne Program helps thousands of these individuals achieve greater independence and reduce their reliance on government assistance through meaningful employment.

Today, NIB and its network of associated nonprofit agencies employ more than 5,800 people who are blind nationwide, including more than 500 veterans. These employees work in a range of jobs and professions and earn competitive wages with opportunities for professional development and career advancement.

II. DISCUSSION

Over the years, NIB has worked closely with GSA, OMB, and hundreds of industry partners to ensure that the AbilityOne Program is not forgotten in new procurement initiatives. NIB is ready to provide the same support and collaboration with the implementation of commercial e-commerce portals.

As the procurement environment continues to evolve, it's anything but "business as usual" at NIB. In conjunction with GSA and our industry partners, we've implemented more efficient distribution and delivery models, updated our product packaging using commercial best-practices, and upgraded our processes and systems to deliver best-in-class service. We've launched new and innovative product lines, enhanced our customer care and feedback programs, and responded to new and emerging requirements. Time and again, we've demonstrated our commitment to embracing change and not resisting it—the same commitment holds true for the commercial e-commerce portal initiative.

There are, however, unique considerations and complexities with government procurement that distinguish it from commercial buying, not the least of which are the procurement laws designed to support trade, socioeconomic, environmental, and other interests that are for the public good. Indeed, government purchasing and general consumer purchasing are not the same; GSA and OMB must recognize and account for these differences in its analysis.

NIB also acknowledges that there may be process and policy efficiencies related to procurement and acquisition that can be gained by federal agencies. We encourage federal agencies to implement process improvements to streamline their internal purchasing; however, these efforts cannot supersede or encroach on existing, well-established federal procurement law.

To help guide GSA and OMB in drafting the Phase I Implementation Plan, NIB offers the following input and recommendations for the government to consider:

1. No waivers or exemptions or relief from existing laws should be granted.

Prohibiting waivers or exemptions to applicable domestic sourcing requirements—including the JWOD Act, Trade Agreements Act, Small Business Act, Buy American Act, and others—is critical to protecting Congress’ intent of protecting these socioeconomic programs that exist for the public good and supportive of the American taxpayer.

As federal procurement programs have evolved, the pre-existing and well-established laws have always remained in effect. When GSA launched new purchasing channels such as GSA Advantage, GSA Global Supply, and the Federal Supply Schedules, the AbilityOne requirement did not go away. When GSA closed its depots and shifted to a commercial distribution model, the AbilityOne Program still applied. The AbilityOne Program is not a preferred-source program; rather, it is a *mandatory*-source program directed by statute. Congress continues to reaffirm its commitment each and every year by providing annual appropriations that support the AbilityOne Program and its goal of providing quality employment for Americans who are blind or have significant disabilities.

Many industry partners diligently comply with federal procurement laws and regulations today. These companies have updated their systems and adapted their processes to be good stewards of the law, acknowledging that to conduct business in the federal marketplace, certain rules apply. The government must not allow other companies (e.g., e-commerce portal providers) to operate outside this well-established paradigm.

2. Compliance should be a shared responsibility by all parties involved in the commercial e-commerce portals.

Commercial e-commerce portal providers, sellers, suppliers, and purchasers must all play a role in ensuring compliance with applicable laws, through technical solutions, internal policies and processes, training and education, or a combination thereof. Removing the compliance requirement in an “open marketplace” would likely result in purchasers unintentionally violating federal procurement law. NIB believes commercial e-commerce portal providers are responsible for creating an *environment of compliance*, where sellers and buyers are set up for success.

NIB does not recommend self-certification of compliance, which is only effective if there is a contract clause requiring self-certification and outlining substantial consequences for non-compliance.

3. Proper contracts are essential in order to provide a compliant buying option for the customer.

NIB recommends that GSA enter into a contract with commercial e-commerce portal providers, incorporating relevant terms and conditions—especially those that exist to support laws such as the JWOD Act. E-commerce portal providers, in turn, can flow down compliance requirements as necessary to any third party sellers conducting business through their portals. GSA currently uses this practice on Federal Strategic Sourcing Initiative (FSSI) contracts and the schedules program.

Without this type of contractual chain, compliance efforts would be largely ineffective and inefficient. While the government purchaser of commercial-off-the-shelf (COTS) items does have a responsibility to purchase items in a compliant manner, without a contract providing for legal requirements, there is no real recourse for the government if a government employee purchases contrary to law. While such an employee may need additional training or be subject to personnel actions, experience has taught us that sellers to the federal government can, and will, play an important role in accountability by offering compliant solutions. Therefore, e-commerce portal providers need a legal contract, binding them to critically important terms, so that the government has legal recourse and avenues for financial recovery if non-compliant goods are offered to a purchaser.

4. Commercial e-commerce portal providers should use available technology to facilitate compliance.

Existing technologies can achieve the goals of the commercial e-commerce portals initiative: shorten delivery times, reduce administrative costs, and make compliance easier. Today, commercial e-commerce platforms and software companies are able to provide highly tailored, easily accessible e-commerce portals to their customers worldwide.

GSA Advantage, for example, uses software to alleviate compliance burdens for federal customers and contracting officers. GSA's 4P tool, ETS flagging tool, and remediation tool all make compliance easier for vendors and federal customers while reducing administrative costs. These tools, in concert with the longstanding AbilityOne distributor policy (significantly enhanced in 2016), have been very effective in increasing AbilityOne Program compliance: The AbilityOne non-compliance rate for GSA Advantage sales decreased from 12% to 4% in the past year alone.

Current technologies are also enabling even the smallest of businesses to comply with the AbilityOne Program requirement. A number of the more than 300 authorized AbilityOne distributors are small businesses that use widely available technology to prohibit commercially designated ETS products from their government-facing e-commerce portals.

Businesses that do not have a federal-only portal in their e-commerce platform are still able to provide federal users compliant purchasing through block-and-substitution technology. This technology blocks the sale of non-compliant commercial products from federal customers and substitutes the federally-accepted equivalent product. Similar technologies are used to prevent the sales of non-compliant TAA items within the federal marketplace.

Failing to use technology to enable compliance would impose a significant administrative burden on government contracting officers and purchasers. If compliance is not provided electronically, government employees would need to implement laborious manual processes to validate that COTS products comply with applicable procurement laws.

In addition to implementing available technology, making data from the commercial e-commerce portals available will also be critical to assessing and improving compliance. NIB believes this data should be owned by the federal government and shared with partners to assist in improving compliance through training and education.

5. Training and education are necessary to ensure compliance.

Effective training and education for compliance must occur at every point in the purchasing cycle—from portal hosts, to sellers, to government purchasers. All links in this chain must understand and incorporate the applicable laws and regulations.

NIB conducts extensive AbilityOne Program training with federal purchase card holders and authorized distributors. In the past two years NIB has collaborated with GSA to host standing-room-only “Industry Days” and training sessions for FSSI vendors. Industry has demonstrated its willingness to learn about the AbilityOne Program and make it a part of their processes and systems. NIB can share best practices on training and outreach with GSA and OMB as the commercial e-commerce portals initiative progresses.

6. Regulations for the use of commercial e-commerce portals must apply government-wide.

NIB believes regulations for commercial e-commerce portals should be codified in both the FAR and the GSA Acquisition Manual (GSAM). FAR regulations are necessary to ensure the ground rules for purchasing through the portals reach and apply across the entire federal government. Regulations are also needed for GSA; specifically, clauses to be included in contracts for portal providers and instructions for GSA personnel overseeing the portals.

III. CLOSING

Products sold through the AbilityOne Program create and sustain meaningful U.S.-based employment and career development for thousands of Americans who are blind. The program helps these individuals become taxpaying citizens who are less reliant on government assistance.

Failing to adequately include the AbilityOne Program in the commercial e-commerce portals initiative will have severe ramifications for the employment of people who are blind; non-compliance translates into lost American jobs.

Alternatively, building compliance mechanisms into the commercial e-commerce portals up front, along with supporting policies and effective training and education, can have a tremendous benefit for the government, private industry, and American taxpayers by:

- creating additional jobs for people who are blind or have significant disabilities through the AbilityOne Program;
- streamlining federal acquisition while creating taxpaying citizens who are less reliant on government assistance; and
- supporting private industry with a proven, reliable means to conduct business in the government marketplace.

NIB, GSA, and OMB have long partnered to create employment opportunities for people who are blind through the AbilityOne Program, and NIB is ready to work with the government and industry partners to ensure that the Program is able to continue fulfilling its important social mission as it has for the past 80 years.

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Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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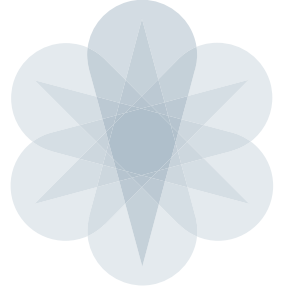
Submitter's Representative: Sampak Garg

General Comment

See attached file(s)

Attachments

GSA_ePortals_16_Jan_2018



16 January 2018

SUBMITTED VIA REGULATIONS.GOV

Ms. Lois Mandell
U.S. General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street, NW
Washington, DC 20405

Re: Procurement through Commercial e-Commerce Portals

Dear Ms. Mandell:

I am submitting these comments on behalf of Juniper Networks in reference to the General Services Administration's (GSA) request for information (RFI) on 'Procurement through Commercial e-Commerce Portals.' As a manufacturer of commercial-off-the-shelf (COTS) products, Juniper believes that the commercial e-commerce portals called for under section 846 of the FY 2018 National Defense Authorization Act can revolutionize the government's procurement of products. The portals can enable access to a wider variety of solutions, more efficient ordering, shortened delivery times, reduced administrative costs, and lower acquisition costs. In order to achieve these benefits, however, the GSA must ensure that the portals maintain a healthy, competitive environment that does not discriminate against particular manufacturers or solutions.

By way of background, Juniper Networks delivers high-performance network infrastructure products and services spanning routing, switching, security applications, and firewalls. While we count numerous commercial service providers and enterprises as our customers, we are especially proud of our rich history of providing our products and services to Federal government departments and agencies that recognize the network as being critical to their success in serving the American public.

We appreciate that, as part of your mandate under section 846, you are seeking public input on the factors that you should consider in developing an implementation plan for the portals. Juniper Networks addresses the relevant focus areas herein.

A. General Program Design

1. Number of portals.

In the RFI, GSA asks what factors it should consider when determining the appropriate number of contracts to award to portal providers to achieve the objectives of the law (enhance competition,

enable market research, and ensure reasonable product pricing). Juniper believes that GSA needs to award contracts to all willing and able portal providers in order to achieve those goals.

By definition, competition means having multiple options. If the government were to enter into a contract for IT products with just a single portal, that single portal would not provide the government with the competition needed to conduct proper market research, analyze a variety of solution options, or review different pricing options.

As we indicate below, the portals should serve merely as conveners for government buyers and sellers; they should not be responsible for managing products. Because the government would not be imposing significant requirements upon portal providers (other than to host the products of multiple sellers), it would not be difficult administratively for the government to enter into contracts with multiple portal providers. In fact, the government should enter into contracts with every provider that is willing to abide by various requirements, such as hosting the products of multiple sellers.

2. Relationship between GSA, Government buyers, e-commerce portal providers, and sellers through portal providers.

GSA asks what the relationship should be between the various parties in a transaction conducted through a portal. Juniper Networks suggests that the portals would be most effective in enabling competition and allowing the government to view an array of products if they served only as conveners for COTS sellers and government buyers.

We envision an approach in which each of the four entities would have a clearly defined role. With this model, there would be only two types of contracts: (1) those between GSA and the portal providers for the service of the portals; and (2) those between the government buyers and the sellers whenever the government purchases products through a portal. There would be no privity (1) between portal providers and sellers or (2) between GSA and the sellers.

3. Relationship to existing programs.

With this focus area, GSA seeks input on what the relationship should be between this new portal program and existing acquisition programs such as the Federal Supply Schedules. Because the portals are to be commercial marketplaces for government acquisitions, they should not have any relationship to those existing programs. Instead, the portals should serve as alternative acquisition platforms.

More specifically, the government should not set as a prerequisite for sellers to be on the portals that they first have to be on Schedules or other government acquisition vehicles. Any such prerequisite would limit the government's product choices to those it already has access to through other means and would make the portals irrelevant.

B. Buying Practices

1. Competition.

The FAR competition rules not only should apply to the portals but also should be enhanced for the portals. The rules would impose different requirements upon GSA, the portal providers, and government buyers.

First, as we note above, the GSA should enter into contracts with every commercial portal provider that agrees to follow certain guidelines. The existence of multiple providers would give government buyers access to a broader view of sellers and industry solutions.

Second, to derive the full benefits of commercial portals, the rules should require that the portals host multiple brands of the products they offer. For instance, if a portal hosts a high-performance network router from one specific brand, it should be required to host the high-performance routers of any other brands that wish to be hosted. As we state throughout this submission, the providers should not be in the position of selecting which sellers can offer products on the portals. As long as a seller certifies or asserts that it can meet government requirements, it should be eligible to offer products on the portals. This would enable buyers to consider a full swath of industry solutions and conduct proper market research on potential options.

Finally, because the portals will enable better market research and competition, government buyers should have to consider different solutions for their needs. If an agency needs a router, the portal acquisition regulations should mandate that the agency specify its performance and functional requirements on the portal, compare resulting options from more than one manufacturer, and document why it chose a particular manufacturer/solution. By posting its requirements on the portal, the agency would inject transparency into its processes and permit sellers to see what the agency needs. If an agency indicates that it requires a specific set of features but then purchases a solution that does not have those features, other sellers should be permitted to protest that acquisition through an agency-level protest and to the GAO (with no contract value floor). Moreover, existing acquisition regulations allow agencies to fulfill competition requirements merely by looking at three resellers of a single manufacturer's product; that should not suffice for competition in the portal program.

2. Compliance.

The RFI asks which entity or entities involved in the portal program should be responsible for managing seller compliance with supply chain risk management (SCRM) requirements and other regulations. In accordance with the construct that we describe above (whereby sellers would have privity of contract with government buyers only and not the portal providers), each seller should be responsible for its own compliance with applicable laws and regulations. To have its products offered on the portals, the sellers should have to self-certify to the providers that their products meet all

applicable government requirements. Sellers could accomplish this through self-certification on the System for Award Management.

At the outset, sellers clearly are in the best position to manage their own compliance requirements. They know their businesses, should know the applicable requirements, and should be able to implement the necessary measures if they intend to serve the Federal government market. For these reasons alone, sellers should be solely and legally responsible for ensuring their compliance with SCRM and other regulations.

Moreover, mandating that portal providers manage seller compliance would be problematic. It would be burdensome for portal providers to have to track innumerable requirements (from health and safety to product sourcing) for multiple sellers of multiple products. The providers simply would not have the expertise or insight into manufacturer operations to do that, and the GSA should not expect them to acquire it.

Finally, having the providers maintain responsibility for seller compliance could create conflicts of interest for the providers. They would be in a position to favor or disfavor particular sellers based on the providers' subjective analyses. It is inadvisable to create an environment in which such conflicts could exist.

3. Supplier and product performance.

GSA seeks input on existing commercial practices for reviewing supplier and product performance and how the government should use product reviews and existing past performance data under the portal program.

While product reviews in commercial online marketplaces are publicly available, we do not believe that section 846 portals should follow the same principle. Reviews in commercial marketplaces are open to the public because the potential customers are 'the public.' With respect to the intended GSA portals, the potential customers would be government agencies only, such that there would be no reason for product reviews in GSA portals to be viewable by anyone other than government end-users and acquisition personnel.

In addition, government buyers are privy not only to public information but also to confidential business information regarding the products they buy. If government buyers posted public reviews on the portals and some of those reviews inadvertently contained confidential business information, affected sellers could be put at a competitive disadvantage.

Finally, we do believe that government buyers should use existing past performance data in making acquisition decisions. Past performance data can be an accurate reflection of a seller's ability to perform a contract, adhere to a schedule, and conduct itself ethically. These are valuable data points, and the government should be able to consider them when making acquisition decisions.

4. Responsibility of platform sellers.

GSA seeks input on what, if any, responsibility determination should be made for companies selling through the portals, who should make the responsibility determination, and when such a determination should be made. As we have indicated previously in this submission, Juniper Networks believes that the portal providers should serve as conveners and have no role in seller responsibility determinations.

First, imposing responsibility determination requirements on portal providers would be burdensome. The responsibility factors contained in FAR part 9 (financial resources to perform the contract, able to comply with performance requirements, record of integrity and ethics, necessary operational and organization controls, etc.) are numerous and complex. If the providers offer a broad menu of product types and manufacturers, it would be difficult for them to engage in a responsibility determination for each one without slowing down the acquisition process considerably.

Moreover, having the providers perform responsibility determinations could create conflicts of interest for the providers. They would be in a position to favor or disfavor particular sellers based on the providers' subjective analyses. It is inadvisable to create an environment in which such conflicts could exist.

C. Implementation

1. Changes to existing acquisition framework for COTS item.

As we indicate throughout these comments, the portal program has the potential to revolutionize government procurement as long as the program promotes competition and transparency. If the program continues current acquisition practices that limit competition (such as allowing agencies to specify particular brands, to evade market research requirements, and to avoid justifying their acquisition decisions), then the portals serve no useful purpose.

Juniper recommends that the regulations governing portal acquisitions require GSA to enter into contracts with all commercial providers that are willing to host any product sellers that certify to government compliance requirements. The regulations should direct that government buyers consider the solutions of multiple manufacturers when they need products, and OMB should issue guidance explicitly overruling the current principle that agencies have satisfied competition requirements when they obtain proposals from three resellers of a single product.

Agency acquisition officials should be required to undergo training that is specific to the portals. This training should emphasize that (1) the portals are a tool for agencies to view competing solutions and (2) agencies should not allow pre-existing biases for particular manufacturers to influence their acquisition decisions. While acquisition officials currently participate in training on competition requirements, we continue to see acquisition practices that run afoul of existing regulations; it is clear that training for the portals will need to be extensive.

Ms. Lois Mandell
16 January 2018
Page 6 of 6

2. Level of relief.

The RFI inquires whether all Executive Orders and regulations should apply to all COTS transactions, even those over micro-purchase threshold and up to the Simplified Acquisition Threshold (SAT). Juniper believes that such requirements should apply to COTS sellers of all sizes.

The FAR states that one of the goals of the acquisition system is to 'fulfill policy objectives.' Throughout the years, the Executive and Legislative Branches have seen fit to employ the FAR to address important policy objectives such as combating human trafficking, preventing the introduction of counterfeit products into the government's supply chain, and business ethics. These are legitimate policy objectives for the government to pursue, and if the government elects to pursue them through the acquisition process, then there is no reason why sellers of certain sizes should be exempt from complying with them. A violation of any of these requirements by a small business is no less egregious than a violation committed by a large business.

3. Rulemaking.

For two significant reasons, GSA should implement the portal program through the FAR, not through separate GSA regulations. First, it would be inefficient for GSA to set up an alternative regulatory system when there already is an established and well-recognized one in the FAR. Because acquisition officials and sellers are familiar with the FAR, it would be a smoother transition to the portals if the portals were based within the FAR. Second, the FAR already contains government-wide commercial item requirements that can and should be applied to the portals; if GSA establishes an alternative set of regulations for the portals, provisions that should be carried from the FAR to the portals could be missed and lead to regulatory gaps.

Thank you for your consideration of our views. Should you have any questions regarding this submission, please feel free to contact me at rdunn@juniper.net or (703) 967-3441.

Sincerely,

Bob Dunn

Bob Dunn
Vice President, Federal Government Sales

PUBLIC SUBMISSION

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0779
Comment on FR Doc # 2017-26964

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General Comment

To Whom It May Concern:

Thank you for the opportunity to submit comments on the "Procurement Through Commercial e-Commerce Portals". As a small business that has had a GSA Schedule since 2004 we have seen many changes to the different government portal platforms. First and foremost I would recommend that the government take a look at the portals they already have (GSA Advantage, Fedmall) rather than immediately try to reinvent through a third party commercial portal. With government buyers already being accustomed to the existing portals it may be most cost effective and customer friendly to improve the ones that already exist.

If a new commercial portal is deemed necessary, I would hope that it would be by a neutral portal platform provider and not a company, with their own portal, that sells products themselves. Such a provider would compete against companies they have direct influence over as the host of the platform while, at the same time, competing for the same federal government sales. There would seem to be a conflict of interest between the portal provider and the federal seller trying to sell on the portal.

If a non-neutral platform provider is selected we would have the following concerns:

Concerns about Data Integrity and Security of Data

Searches being weighted based on paid advertising, weighted on the platform portal owner products,

weighted on the relationships with the platform portal owner.

Concern about ability to block for ETS, Non TAA Compliant products

Will existing considerations for small business, social-economic programs and mandatory sources be made per FAR if a non-neutral platform portal is used (especially if it the platform owner is not one of the existing considerations.)

Concern over who is allowed to sell on the portal-is it up to the government or up to the commercial provider?

General concerns and challenges with a commercial platform (neutral or non-neutral):

Ability to police a commercial platform. GSA is continually challenged by the policing of ETS, TAA, and gray market compliance on its own platform. The task becomes far more difficult on a commercial platform.

Data integrity and Security is at risk with a commercial platform.

Costs of doing business on the new platform. A new platform provider could certainly require a percentage of each sale to be paid to them. With this happening, the cost of selling products to the government will increase. Amazon requires a 15% commission on all office supplies sold through their portal. Any seller would have to pass this cost along to the buyer, thus increasing the cost of goods sold to the federal government. The existing government portals do not have commissions associated with sales on the portal. Additional costs need to be factored in to a commercial provider as a business owner if there are costs associated with how search results appear to the government purchaser those will need to be added into the cost of the product as well.

Part number standardization is an ongoing concern on both GSA Advantage and Fedmall. This issue becomes even more of a concern on a third party sales portal. The manner in which non-neutral portal providers have set up their part number system would actually make it more difficult to standardize part numbers. If a neutral provider's system were to be used the government would have to establish a standardized system of part numbers. If such a project were to be undertaken for a neutral platform provider the same could most certainly be done for the existing GSA Advantage and Fedmall portals. Such a task would drastically improve the existing portals and could even be more cost effective.

Thank you for your time and consideration of our concerns.

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0778
Comment on FR Doc # 2017-26964

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General Comment

See attached file(s)

Attachments

SourceAmerica FR Comments on E-commerce portals_1.16.18

January 16, 2018

General Services Administration
1800 F Street, NW
Washington, DC 20405

Via electronic submission at <http://www.regulations.gov>

Re: Procurement Through Commercial e-Commerce Portals (82 FR 59619)

Thank you for the opportunity to comment on “Procurement through Commercial e-Commerce Portals” as published by the General Services Administration (GSA) in the Federal Register (FR) on December 15, 2017. SourceAmerica supports the intent of Section 846 of the FY18 National Defense Authorization Act (NDAA) to improve federal procurement through advanced technology and in partnership with the private sector. As a key stakeholder, we appreciate the ability to collaborate with GSA and the Office of Management and Budget (OMB) to provide input on the establishment of the commercial e-commerce portals program. Our comments on the implementation plan focus on the nexus between Section 846 and the AbilityOne® Program. The AbilityOne Program, established by law 80 years ago, is the largest source of employment for people who are blind or have significant disabilities in the United States. We urge GSA and OMB to ensure that portal providers fully uphold the requirements of the AbilityOne Program in the implementation of Section 846 and the establishment of the commercial e-commerce portals program.

SourceAmerica is a 501(c)(3) nonprofit organization and an AbilityOne® Authorized Enterprise designated as a Central Nonprofit Agency (CNA) by the U.S. AbilityOne Commission® in accordance with the Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85). SourceAmerica does not represent the U.S. AbilityOne Commission, an independent federal agency. SourceAmerica supports a national network of nonprofit agencies (NPAs), including more than 450 NPAs that participate in the AbilityOne Program and provide employment to over 40,000 people with disabilities. Across the country, NPAs and their employees provide essential products and services to the federal government and other buyers at a fair market price.

The U.S. AbilityOne Commission maintains a Procurement List (PL) of products and services that have been placed in the AbilityOne Program. This mandate requires federal agencies to purchase products or services on the PL from designated NPAs at fair market prices approved by the Commission (FAR Part 8.002; FAR Subpart 8.7). SourceAmerica's NPAs provide products and

services for purchase through GSA procurement vehicles including the Federal Supply Schedule, Federal Strategic Sourcing Initiative, and GSA Advantage!. We commend GSA for their ongoing efforts to promote compliance with the PL within these existing e-commerce platforms and recommend that a similar level of oversight be applied to the operation of the commercial e-commerce portals.

The AbilityOne PL includes a variety of products that meet the definition of commercial-off-the-shelf (COTS) items, such as commonly used office products and janitorial supplies. Certain items are classified as total government requirements and are widely available through multiple government and commercial distribution channels. This process is governed by the U.S. AbilityOne Commission's regulations (41 CFR Chapter 51), "Clarification of Scope of Procurement List Additions" (71 FR 69536; December 1, 2006), other administrative policies (available on www.abilityone.gov), and FAR Subpart 8.7.

Although Section 846(f)(1) states that "all laws, including laws that set forth policies, procedures, requirements, or restrictions for the procurement of property and services by the Federal Government, apply to the program," Section 846 and the FR notice also contemplate "whether any changes to or exemptions from laws" are necessary. **As previously stated, we urge OMB and GSA to fully uphold the AbilityOne Program in carrying out this program and, to that end, ask that they require the portal provider to abide by the following laws and regulations in the implementation of the commercial e-commerce portals program:**

- 1) The Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85; 41 CFR Chapter 51; FAR Subpart 8.7) which established and governs the AbilityOne Program;
- 2) The Competition in Contracting Act (41 U.S.C. 3301; FAR Part 6.001(b)) which exempts contracting procedures "expressly authorized by statute" from full and open competition requirements;
- 3) The Federal Acquisition and Streamlining Act (41 U.S.C. 264 note) which states that a requirement to utilize commercial practices does not modify or supersede, nor is intended to impair or restrict, authorities or responsibilities under the Javits-Wagner-O'Day Act;
- 4) FAR Part 13.003 which states that Simplified Acquisition Procedures do not apply if federal agencies can meet the requirement through required sources of supply under FAR Part 8; and
- 5) FAR Subpart 13.2 which states the requirements in Part 8 apply to purchases at or below the micro-purchase threshold.

Generally, in accordance with NDAA Section 846, we recommend the implementation plan include the following:

- 1) A commitment by OMB and GSA to uphold the requirements of the AbilityOne Program and to consult with the U.S. AbilityOne Commission in carrying out the commercial e-commerce portals program;
- 2) Identification of the AbilityOne Program as an "existing program" that should be assessed for impact in Phase II;

- 3) Acknowledgement that specific oversight protocols should be developed in conjunction with clear roles and responsibilities to ensure compliance with the AbilityOne Program in Phase III;

We also note that Section 846 requires assessments of the program by the Comptroller General and the effect of the program on small business goals. We suggest that the AbilityOne Program receive a similar level of impact analysis by GSA, OMB and the Comptroller General.

With respect to the three focus areas of questions in the notice, SourceAmerica offers the following comments and recommendations:

General Program Design

- **Number of portals:** The law is clear that the commercial e-commerce portals program should include multiple contracts with multiple providers. We agree with this approach to promote competition and best value for the government buyer. However, we are concerned with potential barriers to entry, such as seller registration fees. While larger entities with established capital and financial foundations may have the capacity to invest in overhead, we are concerned about the potential burden on nonprofit entities, such as AbilityOne NPAs. Our proposed solution is that such fees should be waived for nonprofit sellers.
- **Relationship between GSA, Government buyers, e-commerce portal providers, and sellers through portal providers:** By mandating standard terms-of-use agreements between the parties, with explicit identification of roles, GSA can ensure that privity is upheld to the statutory and contractual requirements of government buyers. Both buyers and sellers should have explicit contractual agreements with the portal provider to govern the use of the portals system. Terms should be defined by the FAR and/or GSA rules and it is critical that terms are no more onerous to the seller than those currently used for micro-purchase. Mandating a balanced agreement and addressing specifics like warranty offers, modifications, and compliance responsibilities will avoid burdensome terms that push excessive risk to sellers, unnecessarily increase prices, and exclude nonprofit sellers from the system.
- **Relationship to existing programs:** GSA should analyze its existing systems and consult with the Department of Defense and other agencies regarding their systems and business processes. The best practices of existing systems should be leveraged to preserve what is already working, create consistency, and minimize confusion between existing systems and future commercial e-commerce portals. As mentioned earlier, GSA has taken significant steps to ensure compliance with the AbilityOne Program within existing channels and we recommend adoption of similar strategies in carrying out this commercial program.

Buying Practices

- **Compliance:** The government, commercial portal providers, and sellers should have explicit responsibilities pertaining to the e-commerce portals and the AbilityOne Program. The U.S. AbilityOne Commission is the primary authority for defining and enforcing compliance and ensuring the integrity of the AbilityOne Program. The Commission should be responsible for

providing periodic updates of the AbilityOne Procurement List to the commercial portal providers and sellers. The commercial portal providers should collect and provide specific transactional data to the U.S. AbilityOne Commission on a regular basis.

Under existing government systems, AbilityOne-authorized commercial distributors are required to make certain items available for prompt delivery. The sale of “essentially the same” or “ETS” commercial equivalents to these products, as determined by the U.S. AbilityOne Commission, is prohibited in accordance with the Commission’s regulations at 41 CFR 51–5.3(a). If a federal customer orders an ETS equivalent, AbilityOne-authorized distributors are required to substitute and deliver the corresponding product instead (U.S. AbilityOne Commission Policy 51.540, Requirements for Authorized Distributors). The commercial e-commerce portal providers should leverage this process and develop new system functionality that will notify buyers of mandatory source requirements and minimize “buying-around” the AbilityOne Program.

- **Considerations for small businesses, socio-economic programs, and mandatory sources:** The existing requirements associated with the AbilityOne Program as a mandatory source of supply to the Government should be upheld by GSA, OMB, and other federal agencies as they carry out the commercial e-commerce portals program.
- **Supplier and product performance:** The use of customer reviews as a commercial practice presents a conflict with FAR 42.1502(h), which prohibits past performance evaluation of contracts awarded under the AbilityOne Program. Given this mandate, from the AbilityOne Program, portal-based reviewing capabilities should be disabled for AbilityOne products.
- **Responsibility of platform sellers:** We recommend that AbilityOne sources of supply be exempt from any commercial responsibility determination. As set forth in AbilityOne Commission regulations at 41 CFR 51-4.2 and 4.3, nonprofit agencies must fulfill certain stringent qualification requirements. Additional commercial vetting would be contrary to statute and ultimately add no additional value to the buyer-seller interface.

Implementation

- **Level of relief:** The Javits-Wagner-O’Day Act and accompanying regulations, policies, and contract clauses should remain in full force and be consistently applied to all purchases at all dollar thresholds.
- **Rulemaking:** We strongly recommend that regulations for the commercial e-commerce portals program be promulgated in the FAR. Importantly, the relationship between FAR Part 8 and other parts of the FAR should be evident. GSA and other federal agencies that utilize the commercial e-commerce portals program should consider additional regulations and/or guidance to ensure accountability, transparency, and compliance.

In conclusion, we appreciate the commitment of GSA, OMB and our federal partners to the AbilityOne Program, SourceAmerica, our NPA network, and the people with disabilities we serve. We look forward to continued dialogue and stand ready to assist with the design and implementation of the commercial e-commerce portals program.

If you have any questions, please don't hesitate to contact me or John Kelly, Vice President, Government Affairs & Public Policy at jkelly@sourceamerica.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Soroka". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven L. Soroka
President and CEO

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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Submitter's Representative: Stephanie Lambert
Organization: Staples, Inc.

General Comment

See attached file(s)

Attachments

Staples Letter for GSA Comment



January 16, 2018

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd floor
Washington, DC 20405-0001

RE: Procurement Through Commercial E-Commerce Portals
[Notice – MV-2017-05; Docket No. 2017-0002; Sequence No. 25]

Dear Ms. Mandell:

On behalf of Staples, Inc., I write in response to the request for information published in the Federal Register on December 15, 2017 (82 FR 59619).

Staples helps the world work better with work solutions that deliver industry-leading products, services and expertise across office supplies, facilities, breakroom, furniture, technology, promotional products, and print and marketing services. Staples is a proud General Services Administration (GSA) Multiple Award Schedule holder, including category-specific contracts in furniture, food service and janitorial supplies, office supplies, and presentation and promotional products. With a continued pledge to delivering the easiest and most efficient office solutions programs for our federal government customers, our dedicated sales, operations and compliance teams have developed programs for the federal government based on buying patterns and business needs that support federal employees' need to follow all applicable laws and regulations.

This letter is intended to supplement the information previously provided at the public meeting held on January 9, 2018 at the GSA. As discussed at the public meeting, Staples has identified areas of serious concern that will need to be addressed to ensure the overall integrity of the program, the security of US facilities, proper use of appropriated funds and that certain benefits are preserved in the federal procurement program.

Competition Should be Fair and Transparent

A fair and reasonable fee structure is essential to any e-commerce portal program, as transaction fees will have to be passed on to the government agency end-user ordering the commercially available off-the-shelf (COTS) products. Unless the fee is controlled and/or limited, any e-commerce portal has the potential to substantially raise the cost to the government for the COTS requirements. Any fee charged by a portal provider that is open to third-party sellers should be transparent to all parties and factored in to the selection criteria of the government. Additionally, the number of portals should be sufficient to ensure competition and best value pricing. To ensure fair and reasonable pricing, all e-commerce portal proposals should be subjected to the same

pricing analysis initiated when adding products to a Schedules contract. Moreover, competition will be significantly curtailed if the government limits the overlap of product categories on a portal or awards a single source portal provider for a specific product category.

Lack of Transparency and Accountability

There is no provision in the legislation mandating the portal provider make its sales data public. Such disclosure is required under the GSA Schedules and through other government online procurement. While vendors currently can hold the government accountable for unreasonable purchasing decisions through the Government Accounting Office protest process, this new legislation seems to circumvent the protest process, removing all accountability from the government purchasers.

A Portal Provider Could Unduly Influence Pricing

There is no provision to prohibit the portal provider from selling its own products through the marketplace at the same time it hosts competitors' products for sale to the government. Additionally, the portal provider may exclude a qualified seller (as defined by the federal government) from the marketplace without reason. In effect, the portal provider's inherent knowledge of pricing could create a near-monopoly thus giving it an inherent "data superiority" advantage over other vendors using its marketplace. No commercial entity currently has that power because commercial vendors currently can sell to the Government through GSA Advantage, FedMall, or through their own websites. If a portal provider is permitted to sell alongside third-party sellers and control access to the portal by such third-party sellers, the government will need to ensure strict oversight to curtail activity by the portal provider that decreases fair competition.

Severe Impact to Veteran, Minority-owned and Small Businesses

There has been no evaluation of the impact of the e-commerce portal program on Minority/Veteran-owned businesses. Moreover, the program will significantly impact small businesses who could be critically impacted by additional costs or fees applied by the marketplace provider, yet there is no indication that input was sought from the Small Business Administration or from any small business advocacy organizations. Eighty percent of GSA Schedule holders are small businesses, so changes in procurement could impact up to 14,000 of those firms. Potential unintended negative consequences could affect small businesses that are currently GSA Schedule contractors.

Critical Government Compliance and Security Requirements Must Remain

Compliance should be the responsibility of the portal provider with oversight by the GSA. The portal provider must hold privity of contract with the government and be responsible for compliance requirements that must remain in full force regardless of the method of purchase especially TAA acquisition regulations, Buy American Act, and all Ability-One COTS programs. Robust commercial practices of e-commerce portal providers in vetting sellers on their platform are essential to ensuring authentic and compliant products are being sold on the platform. All portal providers should be required to verify that any third-party seller is authorized by the manufacturer or brand owner to sell its products. A race to provide the lowest cost product could lead to a low-price-technically-acceptable purchasing model, which will motivate portal providers

to replace U.S. products with cheaper overseas products that are readily available on these online marketplaces. Moreover, there are no provisions accounting for the detailed supply chain security requirements at government facilities thereby putting US facilities at risk nor are there provisions limiting the portal provider selection to US companies. Further, it is recommended that the portal provider offer a compliant environment for government agency end-users by clearly identifying products that are on schedule and those that are open market while blocking items that are Essentially the Same as designated by the Committee for Purchase. In this manner, the government would have more assurance that appropriated funds are expended properly and the Javits Wagner O'Day Act would not be circumvented.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie S. Lambert". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Stephanie S. Lambert
Vice President, Associate General Counsel

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Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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General Comment

"Procurement Through Commercial e-Commerce Portals"

Gregory Jaeger

ATI

ATI is pleased to provide a response to the 15 Dec 2017 GSA and OMB request for comments in drafting Phase I Implementation Plan to Section 846 of the National Defense Acquisition Act for FY18. ATI drafted comments to the announcement prior to the 9 Jan 2018 public meeting as direct answers to the posted questions. After attending the public meeting and with reflection on the panel discussions, ATI refined the comments to be more encompassing with recommendations on how the Government program may be structured and executed.

Attachments

Greg Jaeger - ATI - Procurement Through Commercial e-Commerce Portals



Procurement Through Commercial e-Commerce Portals Response to GSA 15 Dec 2017 Request for Comment

16 January 2018

A response to the 15 Dec 2017 GSA and OMB request for comments in drafting Phase I Implementation Plan to Section 846 of the National Defense Acquisition Act for FY18. ATI drafted comments to the announcement prior to the 9 Jan 2018 public meeting as direct answers to the posted questions. After attending the public meeting and with reflection on the panel discussions, ATI refined the comments to be more encompassing with recommendations on how the Government program may be structured and executed.

ATI feedback leverages almost 20 years of experience in developing and maintaining the DLA Electronic Mall (DOD EMALL) e-commerce system and over 30 years managing a cadre of programs resolving DoD supply chain challenges. The EMALL program enabled ATI to work directly with all stakeholders including purchasers, principal system operators, suppliers, DLA business partners, cybersecurity groups and host providers. During the EMALL program execution, ATI envisioned a model for how the Government might leverage the commercial e-commerce industry without the costs and risks of total system ownership. The directives in Section 846 were highly predictable when assessing Government product purchasing needs, and dynamic commercial practices. This Government initiative comports with ATI's active experience in collaboration and consortia management, international standards development, supply chain risk management, advanced manufacturing, mission thread development, software development methodologies, cybersecurity risk management, and Industry-Government-Academia engagement. ATI's review of the questions and the industry day discussions suggests the Government approach is premature in solely focusing on the portal solution before the foundational element of defining the program scope to meet the objectives.

The program definition should lead with a problem statement that addresses Section 846's directive to "establish a program in order to procure commercial products." The barrier in embracing commercial technology and practices is larger than a technical solution. The implication is that current Government procurement methods are inadequate and any commercial interfaces into Government processes are ill-defined for effective, mutual operations. The problem statement frames an enterprise view that encompassing stakeholders, relationships, and environment conditions void of technology and previous solutions. The enterprise view is enhanced with Concepts of Operations (CONOPs) that roughly describe essential processes to meet the core objectives. The processes identifying stakeholders, information exchanges, and dependencies form a Program Model the Government can use to stimulate and guide discussions on "changes to, or exemptions from, laws" that must be discovered in market analysis and consultation (Phase II). Stakeholder discussions serve to draft an Implementation Plan; however, it is highly unlikely change or exemption recommendations to laws or policies can be asserted in Phase I until the Program Model is validated.

The Implementation Plan will leverage the Program Model to develop a program roadmap in Phase II that leverages stakeholder groups to extend the core objectives into "R" requirements and "S" solutions approaches. Throughout the program lifecycle, Government and commercial stakeholders partner to design and implement a system of systems that includes Government buyers, commerce portals, technical standards, rules of engagement, regulatory controls, auditable data collections, etc. The Implementation Plan should assert that the system of systems will be incrementally designed and implemented through this collaborative partnership to meet Phase II and Phase III success-criteria schedule. The incremental capability could take advantage of existing Government commercial purchasing programs.

Program Design

The Program strategy should foster, streamline, and adapt a partnership among Government and the e-commerce industry to meet the collective objectives of buyer experience, compliance, and portal success. The partnership will elicit how commerce providers and Government interact at the operational and technical levels and affirm the minimal requirements for each stakeholder. A partnership serves to ensure Government can readily adapt to (and capitalize from) progressive improvements and innovations that commerce portals introduce at varying degrees.

The leading question should be “how can the Government enable its (shopper, buyer, regulator, etc.) representatives to participate in the commercial e-commerce industry while still meeting regulatory compliance?” Portal providers are incentivized to participate by limiting Government intrusion into how portal providers operate and deliver their unique buying experience. The example CONOPs establish “Government use” as: 1) Government buyers using commerce portals like any other user; 2) Government oversight achieved independent of portals using activity/transaction provided to the Government; and 3) Government controls consistently apply to all portals/sites regardless of size, product categories, etc. Government requirements for portal/site customizations should be minimal to encourage a broad spectrum of participation.

Due to the diversity, complexity, and interdependency of all laws, Executive Orders, regulations, and policies, the program should establish a consortium strategy to assess compliance requirements. An ideal assessment should categorize, rank and assign risk factors to each requirement. Task Objectives are: 1) minimize compliance exceptions; 2) minimize the portals’ burden to implement; and 3) centralize enforcement for consistency and requirement changes. For example, portal terms and conditions unique to each portal may require modest augmentation due to the Government buyers and Government oversight relationships.

The 9 Jan 2018 forum elicited the following terms that were posted as different models the Government might adopt to meet Section 846 objectives.

e-commerce: generically describes the action of purchasing goods or services through an online retailer; commonly applied to an online purchase transaction between a purchaser and a single supplier (i.e. staples.com)

e-marketplace: describes an online portal where multiple retailers’ competitively sell goods and services to purchasers

e-procurement: generically describes a system that manages the purchasing process to include approvals, supplier valuations, and transaction tracking

The program will require a combination of all “e” facets to some degree. The CONOPs describes how e-commerce and e-marketplace systems interact with an e-procurement system to facilitate data exchanges needed for authorization, decision-making, and reporting. Phase II Market Analysis and Consultation will validate the essential processes that, in turn, will provide the critical requirements to determine the necessary combination of these “e” components.

Concept of Operations

At the highest level, the Government-Commerce partnership will establish an enterprise of processes and technology integrating multiple systems that incorporates Government buyers, commerce portals, technical standards, rules of engagement, regulatory controls, , auditable data collections, etc. The Implementation Plan should assert that the system of systems will be incrementally designed and implemented to meet Phase II and Phase III criteria. The design will develop a Concept of Operations from which the program, functional and

technical requirements will be derived. These example CONOPS were drafted for multiple viewpoints to illustrate stakeholder objectives, convey dependencies, and serve to identify focus stakeholder groups essential for developing the program design.

The following graphic depicts key procurement components and processes essential to any marketplace ecosystem. These elements provide opportunities to observe, engage, and audit marketplace activity. Each engagement point presents challenges in determining critical informational needs, technical implementation, as well as cybersecurity controls. The core Commercial Marketplace Solutions represent the existing marketplace portals and e-commerce sites. The process areas on the perimeter are potential engagement points where the Government-Commercial data exchanges would occur to afford a minimal level of Government control and insight to the procurement activity. The minimalist approach enables commercial portals to maintain their unique user experience without excessive customization.



Buyer Concept of Operation:

A Government buyer with a Government issued credit card accesses a commercial portal that is Government-purchase enabled. The buyer logs into the portal using two-factor authentication and a Government-issued identification. Upon successful login, the buyer uses the portal the same as any user to view order history, search for goods, add items to a cart, set shipping options, and checkout. The user may observe Government-unique parameters in the profile or checkout information requirements; nonetheless, the experience will be near identical to the same person shopping at the same commerce portal using their personal account. If the user decides to shop at a different commerce portal that is Government-purchase enabled, their experience will be consistent: authenticate using Government-issued identification; profile augmented with Government data requirements; and delivery and checkout options align with Government requirements. Buyers seemingly visit any commerce portal with confidence their actions are fully compliant.

Portal Concept of Operation:

When buyers access a commerce portal and use a uniquely Government-issued credential, the login interface redirects the request to a standardized Government authentication service. The authentication service validates the multi-factor credentials and responds to the portal with user-specific criteria such as spending limits, product restrictions, and vendor preferences. The portal uses this information to augment the users profile, filter search results and tailor the buyer's shopping experience such as alerting when a cart is "full". Upon buyer checkout, the portal submits the cart contents to a central Government purchase review to authorize buyer's selections. The purchase review ensures compliance to federal, agency and command policies such as vendor selection and real time funding priorities. The purchase review responds to the portal with approvals or rejections for each item. When the cart is fully approved the portal proceeds through financial commitment and delivery. When buyer's visit additional portals the same Government validation and review services are consistently invoked. Through standardized Government checkpoints, the portals are not required to develop extensive Government-specific mechanisms. The majority of how portals provide the user experience remains unencumbered; commerce portals maintain their unique user value propositions.

Government Oversight Concept of Operation:

When portals refer to Government services for standard checkpoints such as authentication and checkout, the Government can control the shopping activity without unencumbered users' experiences. The Government is empowered to impose real time policy decisions based on Government-controlled data that ensures compliance to financial, cybersecurity and operational policies. A compelling Government requirement to limit sales of certain goods or vendor volume then it is immediately implementable. Centralized services enable the Government to perform real-time analysis and auditing. As determined by the Government, purchasing rules can be adjusted to throttle buying activity to meet commerce portal activity objectives/limits.

Implementation

Program implementation requires an incremental approach that, in parallel, progresses toward the following goals:

1. Develop and foster Government-Commercial partnerships through a framework of continuous collaboration, feedback, refinement, and validation. The partnerships enable Government to achieve its objectives with the least hindrances to Industry innovation.
2. Execute and refine a roadmap with an "Agile approach" that tests solutions through incremental prototyping, validation, assessment, and planning. The roadmap should incorporate the following attributes:
 - a. Implement parallel solutions to vet optimal/preferred outcomes.
 - b. Remain flexible to eliminate options or develop new solutions with a focus on achieving success factors.
 - c. Impose limits such as spending, category, supplier, etc. to first build a working system and then incrementally expand with more restrictive rules.
3. Standardize Government-Commercial information exchanges to provide a consistent opportunity for all e-commerce sites and e-marketplace portals to participate with a predictable level of effort.
4. Formulate Government resources, policies, and processes to align, adapt and keep pace with commercial innovations. Program success will largely be determined on how adept Government can leverage progress in the online marketplace industry without creating another Government IT system.
5. Implement Government-managed mechanism for centrally implementing the key portal engagement points. Government e-commerce systems such as GSA Advantage and FedMall can serve as baseline models and incremental capability platforms for validating the Government-Commercial data exchanges and for the best practices in how Government can real time audit user transactions.

Summary

The Government necessity to ensure competition, maintain small businesses equalities, prevent counterfeit parts and ensure quality standards, and similar requirements mandates the success imperative for an open, on-going dialogue between Government, Commercial providers, and suppliers. A continuous and collaborative dialogue enables Government to leverage commercial services with innovations that far outpace Government-organic efforts. Success is contingent on the Government-Commercial partnership throughout the program lifecycle – from requirements gathering through operations.

To meet the modernization challenge, Government should commission a technology-agnostic consortium leader who provides a common ground where industry, academia, and Government stakeholders can broker an objective-driven roadmap. A Consortium ensures stakeholder representation, tackle obstacles to competition, and continuously adapts to Government needs and commercial innovations.

As a vendor-neutral organization, ATI provides expertise in roadmap development and vision, collaborative design and engineering, supply chain logistics and agile manufacturing, small business outreach, and technical standards and practices. As consortium lead, ATI maintains consortium-developed priorities, investigates emerging technology and security technologies and practices, and cultivates climate to drive solutions.

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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General Comment

January 16, 2017

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

Re: Notice-MV-2017-05; Docket No. 2017-0002; Sequence No. 25

Dear Ms. Mandell,

Ecolab is pleased to submit the following comments on the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Section 846 Procurement Through Commercial e-Commerce Portals.

By way of background, Ecolab is headquartered in St. Paul, MN, employs 48,000 associates and is a global leader in providing water, hygiene and energy services. We support the federal government through more than \$35 million in sales, including more than \$25 million through GSA Advantage. In 2016, Ecolab helped our customers save more than 161 billion gallons of water, eliminate 52 million pounds of waste and save 11 trillion BTUs of energy. Likewise, we help the federal government operate more sustainably while improving product and worker safety. We serve the federal government in a wide range of sectors, including healthcare, food service and hospitality, food and beverage processing and industrial

water services.

Ecolab aligns with the Federal Acquisition System's vision to deliver the best value product or service to the customer on a timely basis. Ecolab recognizes current gaps in the federal procurement system and appreciates the intent to improve existing processes and establish a platform in alignment with this vision. With respect to the current proposal, we offer the following comments and recommendations for your consideration:

1. Focus on Best Value

Though the federal government is directed to purchase products based on best value and total cost, e-commerce systems rarely provide sufficient analytical tools to identify the best product to purchase. Products with the lowest price often do not provide the best value.

Any new platform needs to easily allow users to consider factors that drive value including: cost per use, product performance, product safety, volatility (in use), toxicity, packaging, dispensing systems, associated materials needed to support effective use (including personal protective equipment), space utilization, convenience, simplicity of operation, ergonomic concerns, international product availability and logistic support, individualized service, training and customer support. These factors, among others, help users evaluate total cost and determine best value, and need to be prominently incorporated into any platform for government procurement.

2. Use One Platform Across the Federal Government

Uploading/downloading transaction and product information and managing content on multiple e-commerce platforms across the federal government causes inefficiencies and increases the cost burden for suppliers. This can dissuade participation by suppliers or cause suppliers to pass on costs of the additional administrative burden to the federal government, and, by extension, taxpayers.

Using one platform will also streamline and standardize users' experience for purchasing.

GSA should design any pilot program for a new e-commerce system to allow users to work through a single platform and portal. If this pilot program proves successful, attempts to expand the e-commerce platform more broadly across the federal government should strive to maintain a one-portal approach across agencies.

3. Incorporate Voice of Manufacturer

GSA should work collaboratively with key manufacturers and other organizations that provide products through the existing platforms prior to engaging e-commerce providers to effectively develop strategy and planning requirement documents. Presentations during the January 9 public meeting hosted by GSA were primarily from GSA and sourcing channel organizations or nonprofits. An e-commerce system must address manufacturers' ability to use the platform.

Specifically, GSA should work with the National Association of Manufacturers, U.S. Chamber of Commerce and the Coalition for Government Procurement to identify opportunities for members to engage on this issue.

All manufacturers, including AbilityOne, have electronic data interchange (EDI) e-commerce capabilities and support information management, reporting and transactions either through GSA or a third party. Engaging these groups early to identify efficiencies and strengths will maximize value within a new system.

In closing, Ecolab is encouraged to see GSA and OMB addressing this important issue, and we look forward to finding ways to work with you to develop a new platform as you consider these and other suggestions.

Regards,

Bob Michels
Director, Government Sales
Ecolab

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Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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General Comment

See attached file(s)

Attachments

20180116-ecommerce_PIA_Comments

January 16, 2018

Comment on GSA e-Commerce Portal from the Parachute Industry Association

The Parachute Industry Association (PIA) is pleased to comment on the implementation of Section 846 of the National Defense Authorization Act for Fiscal Year 2018. Parachutes are a critical item for our national security, and the military requires parachutes to meet stringent quality, safety, and reliability standards. PIA, as a representative of hundreds of companies and thousands of workers at all levels of the parachute supply chain, believes that the e-commerce portal envisioned by GSA could be an important new avenue for acquisition, but that ease of acquisition should not eliminate or weaken the observance and enforcement of important requirements for government and military parachute acquisition.

Parachutes are critical safety items that require important quality assurances, inspections, and training to use properly. The variety of specifications and configurations available for parachutes generally requires purchasers to have a certain level of sophistication in order to assure safe and successful parachute operations. For these reasons and others, commercial e-commerce sites generally do not offer parachutes for sale. PIA believes that GSA should seriously consider how to ensure that users have the necessary knowledge and experience to responsibly purchase parachutes if parachutes are offered on a government-run and -operated e-commerce site. If GSA determines that parachutes and other safety-critical equipment should be allowed on the site, PIA recommends that GSA consider restricting purchase authority to only certain qualified users who understand the unique requirements and responsibility inherent in procuring safety-critical equipment such as parachutes, as well as any other applicable government compliance requirements.

In addition to restrictions on purchasers, GSA should require sellers on the e-commerce site to have verifiable identities and certifications, especially for safety-critical equipment. Established providers of items subject to government-unique specifications, government-unique and defense-unique compliance requirements, or safety certifications will generally not find verification of certifications, locations, compliance practices, or identification to be a significant barrier to entry on the government e-commerce portal. But lack of verification for sellers could lead to unwitting purchase of noncompliant or unsafe materials from sellers with poor or unknown safety records or a history of noncompliance or even debarment. PIA therefore recommends that the e-commerce portal operator be responsible for collecting sufficient verification data from sellers prior to allowing them to offer items for sale on the site. PIA further recommends that purchasers

be responsible for verifying both that they understand the safety and compliance requirements for any item that they purchase on the site and that they have verified that the seller complies with those requirements. At a minimum, the purchaser should be responsible for understanding the requirements and verifying that the seller has self-certified, under threat of criminal sanction, as complying with those requirements and has provided sufficient information for the government to promptly seek redress in the case of a seller who intentionally or recklessly supplies false or misleading information.

PIA and its member companies are proud to support U.S. first responder, disaster relief, and military efforts through dedication to safe and effective parachute operations. PIA believes that parachutes' safety-critical nature and the government's unique compliance requirements merit serious consideration by the GSA before parachutes are ever offered for sale on a government-run e-commerce site.

Best regards,



Roberto Montañez
President
Parachute Industry Association

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0773
Comment on FR Doc # 2017-26964

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General Comment

See attached file(s)

Attachments

OpenCommentsto GSA_Final_Lttrhd

January 16, 2018

U. S. General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street NW
Second Floor
Washington, D.C. 20405-0001
ATTN: Ms. Lois Mandell

RE: GSA Procurement Through Commercial E-Commerce Portals
Notice: MV-2017-05; Docket No. 2017-0002; Sequence No. 25

Submitted to: <http://www.regulations.gov>

Dear Ms. Mandell,

I write on behalf of VWR International, LLC (“VWR”) to offer comments in the wake of the GSA’s January 9, 2018 Public Meeting concerning the “Procurement Through E-commerce Portals” program established under section 846(c) of the 2018 National Defense Authorization Act. Like many other meeting participants, VWR believes that government contracting professionals should have ready access to proven, modern processes and technologies that enable timely, informed decisions about “best value” for COTS products. As a trusted supplier to the U.S. government for decades, VWR is committed to modernizing federal procurement tools and practices in ways that honor existing laws, regulations, and ethical principles; thereby promoting procurement integrity and robust competition.

VWR is a U. S. company and global leader in distribution of laboratory and scientific research supplies and equipment. We employ more than 12,000 associates globally, and have earned the trust of more than 100,000 customers and more than 4,000 suppliers around the world – who rely upon us to select, deliver, and support over 3 million unique products used in research and scientific applications. Our products and services set science in motion in government and private research as well as in sensitive high-purity commercial operations.

We do not believe section 846 of the NDAA should be seen as a mandate to discard GSA Advantage. Rather it should be considered – in the spirit of continuous improvement -- as an invitation to augment the tools available to procurement officials. We disagree with those who suggest that GSA Advantage is fatally flawed and should be abandoned. Doing so is likely a mistake for several reasons, including without limitation, the following:

- The costs and lost productivity associated with training, mistakes, and re-work are likely to be substantial and non-fleeting if GSA Advantage is abandoned.
- The compliance framework embedded in GSA Advantage accounts for the prominent and the nuanced requirements in the Buy America Act, the Trade Agreement Act and the FAR provisions directed to “Commercial Items.” Ensuring a new system will appropriately vets products, vendors, and transactions for every government order would likely be quite costly, and may take years to perfect.

- There is valuable legacy data (e.g. vendor profiles and product characteristics for a broad range of products) in GSA Advantage that may be difficult to migrate accurately to a new system. Legacy transactional data also provides important context for transparency and visibility which supports well-informed procurement decisions.
- GSA Advantage includes transactional data protections that deter misuse of competitor information.

We appreciate the way GSA conducted the initial public meeting. It was clear that GSA sincerely encouraged a high level of public comment and participation. This is a welcome contrast to the legislative process pertaining to section 846, which advanced without even a single public hearing. As GSA considers its options, we believe it is critical that it remain open and receptive to broad input. GSA must also guard against portal/provider selection processes which limit competition under the guise of simplicity or convenience. The allure of “new” technologies must not misguide GSA into sacrificing the fundamental sustainable advantages driven by open, intense competition among qualified sellers. Removing barriers to entry for those who want to offer qualified products and services to the government should be paramount in adopting any new tools or processes for e-commerce procurement.

It is an honor and privilege to serve as a supplier to our nation’s federal agencies. To ensure vigorous competition, the ultimate decision about which suppliers are “qualified sellers” (as defined by relevant U.S. government regulations) must not be relinquished to e-commerce portal providers. To the extent portal providers may be permitted to charge qualified sellers for portal access and/or for transactions on a portal, such charges must be transparent, fair, reasonable, and non-discriminatory. We believe GSA should seek to minimize or eliminate such third-party access/transaction fees as it considers key selection criteria for portal providers.

We are convinced that tremendous value for the government could be derived simply by adding to the GSA Advantage platform advanced data mining and reporting capabilities. Likewise, improvements to the vendor interface known as the Schedule Input Program or “SIP” would allow procurement professionals deeper insights in less time, thereby enhancing the quality and efficiency of data driven procurement decisions.

We are certain of the many valuable benefits GSA will offer to stakeholders because of system modernization. In doing so, GSA will help us accelerate scientific progress in government sectors in new and improved ways. We are anxious for these opportunities and restate our willingness to provide an experienced dialogue to our government scientific communities and GSA leadership.

Thank you again for the opportunity to share our views.

Justin M. Miller
Executive Vice President and
General Counsel

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Comment on FR Doc # 2017-26964

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General Comment

Good afternoon,

I am writing in response to your request for comments relating to section 846 of the National Defense Authorization Act for FY 2018, Procurement through commercial E-commerce Portals. IOPFDA represents over 675 independent office products and furniture dealers throughout the United States. Many of our members either hold or participate in GSA schedules for COTS products and have vested interest in how this new law is implemented. Our members expect a solution with reasonable requirements for participation, and a fair fee structure that does not require them to run their business through a portal operated by a large competitor like Amazon.

Portals capable currently available within our channel supporting multiple GSA schedules now and 100's of dealers. Portals have office supplies, cleaning supplies, furniture, safety products, breakroom, computers, first aid and health care, and printing. The attached document is our responses to your questions regarding General Program Design, Buying Practices and Implementation.

Thank you.

Attachments

IOPFDA NDAA Comments 2018



IOPFDA Comments on NDAA Notice

Good afternoon,

I am writing in response to your request for comments relating to section 846 of the National Defense Authorization Act for FY 2018, Procurement through commercial E-commerce Portals. IOPFDA represents over 675 independent office products and furniture dealers throughout the United States. Many of our members either hold or participate in GSA schedules for COTS products and have vested interest in how this new law is implemented. Our members expect a solution with reasonable requirements for participation, and a fair fee structure that does not require them to run their business through a portal operated by a large competitor like Amazon.

Portals capable currently available within our channel supporting multiple GSA schedules now and 100's of dealers. Portals have office supplies, cleaning supplies, furniture, safety products, breakroom, computers, first aid and health care, and printing. Following are our responses to your questions regarding General Program Design, Buying Practices and Implementation.

A. General Program Design

1. Leveraging Existing – E-commerce portals currently used by independent office product dealers for commercial customers are already available for government use. The landing pages and terms and conditions are programmed and customized to meet the requirement for federal government buying. Hundreds of small businesses can service government customers meeting existing compliance requirements. Under a new marketplace platform, this could be expanded to allow for more competition and more resellers.
2. Numbers of Portals – We believe it is imperative that a multiple award strategy is employed. GSA schedule 75 has successfully made consortium awards within its GSA and FSSI programs. A single portal provider would require small office supply resellers to expose their customers to competitors such as Amazon and Staples. We would urge GSA to consider building their platforms around the commodities they are selling. For example, with office supplies being one of those large spends, we would urge GSA to create a platform for office products,

furniture, computer supplies, first aid, healthcare, Jan San, break room and possibly other items. This type of expertise and commodity specific will be a value to GSA, government buyers and the resellers using this platform. GSA should consider doing the same for other commodity areas, even if that means you end up with five to seven online platforms.

3. Conflicts of Interest – If GSA is going to be successful with this new online marketplace, one of those keys to success and building confidence with resellers that their data will be protected and not used to compete against them, we strongly urge GSA to require that anyone interested in providing the online marketplace platform should be free of current or potential conflicts of interest. You can only do that by requiring anyone selected to provide these services will not use them to sell their own products to the federal government. Anything short of that puts resellers at risk of providing sensitive data to a competitor, who could potentially use it against them and drive them out of the market.
4. Selection of Platform Providers – The NDAA language states that GSA does not have to use competitive processes to award these contracts. We would urge GSA to opt instead to use competitive processes, even if they were sped up in time. GSA will benefit from competing these platforms to various companies who meet your criteria. During the industry day, we heard from GSA, OMB, panelists and the audience how important transparency is to this process. Competing these platforms meets that transparency requirement everyone is seeking. Anything short, could look or give the impression of a favored vendor company.
5. Phase In – Existing e-commerce portals used by independent dealers currently support a wide range of product categories including office supplies, cleaning and sanitation, furniture, safety products, breakroom, technology and printing, and first aid and healthcare. We would support a roll out for these key categories and could add additional categories with programming to address unique features.
6. Relationship between GSA, government buyers, e-commerce portal providers and sellers through portal providers – We believe the privity of contract should remain with the seller through portal provider. Specific performance such as delivery and service are the responsibility of the contract holder. Moving the privity of contract to the portal provider would create a disconnect between end

users and suppliers and create a “transparency” that translates to a lack of accountability.

7. Relationships between existing programs – We believe any new e-commerce portals should co-exist with existing federal supply schedules. The current schedules program and national supply system was developed and has evolved to meet the unique service and security requirements of the DoD and civilian agencies. There is currently significant competition in this space. Suppliers not currently selling in federal either can’t or choose not to meet these special needs. We believe allowing commercial terms and conditions will lead to minimal saving while creating significant logistics and compliance problems.

B. Buying Practices

1. Competition – In the office products channel, most commercial acquisitions through portals are determined on a contract basis. Potential suppliers provide setup/linkage to their unique portal at a contracted price. I believe FAR and other federal procurement guidelines should continue to be applied to purchases between the micro purchase threshold and the SAT. As stated previously, I don’t believe commercializing these buys will lead to saving that will outweigh the significant logistics and compliance problems.
2. Pricing, delivery and other terms of sale – We believe that a “take it or leave it” approach will cost the government money. In our view GSA has been very effective in obtaining and maintaining competitive pricing. Portals that force purchases without some type of cost protection should not be allowed by the government.
3. Compliance – Currently contract holders are responsible for compliance. Our view is that government approved e-commerce portals, currently used by many of our members, provide compliance via continuing certifications and audits, and are meeting the resellers contracted requirements.
4. Consideration for small businesses, socio-economic programs and mandatory sources – We believe that an Amazon/ free market approach will seriously undermine the effectiveness of all these types of programs. Even with current enforcement procedures socio-economic programs suffer from significant leakage and pass throughs to large businesses.

5. Supplier and product performance – Little difference from the government’s process; compliance review via regular audits. We place a heavy emphasis on past performance data “as key to developing a level of trust and impartiality”.
6. Responsibility of platform sellers – Obviously resellers must be responsible. They must have an established business, with good credit and supplier relationships.

C. Implementation

1. Changes to existing acquisition framework for COT’s items – We believe, based on our experiences with Schedule 75 contract holders, that the requirement is for all commerce to be conducted within the portal. This minimizes compliances enforcement and ensures that there is limited leakage for non-compliant business. Control is key.
2. Level of relief – yes
3. Rulemaking – No preference

D. Additional Considerations

There are existing portals out in the market today handling government business through GSA contracts. Continued use and managed roll out, we believe, would ensure a successful and ultimately cost-effective program for the government. We believe the SAP/ Ariba program with bump outs for different verticals offers a solution we could support and work with.

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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0771
Comment on FR Doc # 2017-26964

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Submitter's Representative: Aubrey Woolley

Organization: The Coalition for Government Procurement

General Comment

Comments attached.

Attachments

e-Commerce Platform Comments_final

January 16, 2018

Jeffrey A. Koses
Senior Procurement Executive
Office of Government-wide Policy
General Services Administration
1800 F Street, NW
Washington, D.C. 20405

Subject: Procurement Through Commercial e-Commerce Portals

Dear Jeff,

The Coalition for Government Procurement ("the Coalition") appreciates the opportunity to provide comments regarding Section 846 of the Fiscal Year ("FY") 2018 National Defense Authorization Act ("NDAA") at the public meeting hosted by the General Services Administration and the Office of Federal Procurement Policy (OFPP) on January 9, 2018.

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 are also responsible for many of the commercial item solutions purchased annually by the Federal Government. These 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.

Our members applaud the thorough and deliberative approach that GSA is taking to implement the mandates of Section 846. We believe that continued transparency and inclusion of both industry and Government stakeholders in the deliberative process are critical to the adoption of successful e-commerce acquisition solutions. Following up on the public meeting, the Coalition would like to share the following observations with you.

The stakeholder discussion at the public meeting served to highlight several matters:

1. The commercial market for e-Commerce solutions is immense and continues to evolve. In addition to product-centered online portals, there are spot-buying and other solutions open to different systems and types of goods and services. For this reason, it is important that GSA continue to communicate with its industry stakeholders to identify available commercial options and understand the business relationships that support them.

2. A critical step for GSA and its customer base will be to agree upon the government's goals. In the face of distinctly different commercial options available to the government, ranging from new acquisition vehicles that leverage 21st century technology, to an e-commerce platform that facilitates use of existing government contracts. Given the size and diversity of the government's end-user base, agreeing on a set of objectives will be challenging. Still, it is a critical step in the development of an e-commerce acquisition solution that dramatically improves the user's buying experience. Distilling information from current government customers of e-commerce platforms should be an important part of the process.
3. Finally, the meeting crystalized an age-old issue in the acquisition of commercial items: how to balance the unique requirements of the government with industry's need to maintain standard terms and conditions if it is to pass on to the government the benefits of innovative commercial practices and products. At some point, in the implementation process, the government will have to determine which policies of government are so critical as to warrant making exceptions to standard commercial terms. So too, depending on the e-commerce solution being considered, the government will have to determine whether there exists a market robust enough so as to conclude that there truly are "standard" terms and conditions arising from market forces, as opposed to terms and conditions dictated by the solution vendor.

As enacted, Section 846 holds the potential of affecting government procurement significantly for years to come. Whether, the impact of the legislation represents positive change or a destabilizing force, will depend on the care and deliberation exercised by GSA and the Office of Federal Procurement Policy (OFPP) in assessing the business, law, and policy issues at play in this market. Given the breath of issues presented, we urge GSA to use this opportunity to develop a solid implementation plan that guides the Government. A clear statement of goals would be a tremendous first step to leverage the ability of stakeholders to provide feedback and offer alternatives. Considering the significant taxpayer investment involved here, the Coalition recommends that GSA's examination of 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.

In addition, in implementing the pilot prescribed under Section 846, the Coalition recommends that GSA apply the following "strategic principles" when developing future procurements through commercial e-commerce portals:

1. Ensure long-term online marketplace durability and competition by identifying multiple portal vendors/providers and multiple sellers across multiple portal providers.
2. 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.
3. 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.
4. Ensure that e-commerce solutions are easy to use, manage, and maintain for both purchasers and sellers.

5. Develop programs that are flexible enough to accommodate rapidly changing technology and divergent customer needs.
6. 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.
7. 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.
8. Set a minimum standard of cyber-security for e-Commerce portals.
9. Establish protocols to bar counterfeit and gray market items to reduce threats to national security.
10. Explicitly state the extent to which the pilot vendor must flow-down necessary government terms and conditions to sellers under its contracts.
11. 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.

E-commerce portals offer an exciting alternative for the acquisition of commercial items. Such portal will, and should, not be the only method which the government uses to acquire commercial items. Consequently, as GSA and OFPP explore e-commerce alternatives, the Coalition urges that the Government use any lessons learned to streamline and enhance the value of all commercial item acquisitions. To the extent GSA and OFPP determine that certain government specific requirements will be waived or modified for items purchased through the e-Commerce portal, the same waivers or related modifications should be applied to commercial items acquired through existing programs. Further, we urge the Government to minimize redundancy with existing government e-commerce platforms, and increase clarity as to how and when various commercial item vehicles should be used.

The Coalition looks forward to working with GSA to develop an e-commerce solution for federal customers. 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 'Roger Waldron', with a long horizontal flourish extending to the right.

Roger Waldron
President

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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Submitter's Representative: Brock Lyle

Organization: Overstock.com, Inc.

General Comment

Overstock.com, Inc. is a large online retailer based in Salt Lake City, Utah. Overstock sells a broad range of consumer and business products at low prices, including electronics, furniture, office supplies, decor, rugs, bedding, and home improvement items.

Overstock is enthusiastic about the acquisition reform provision in the 2018 NDAA allowing for online marketplace portals (Section 846) and is grateful for the opportunity to have participated in the January 9, 2018 public meeting at GSA.

As we expressed at that meeting, Section 846 should not be so narrowly interpreted that it excludes most online business models and prefers certain ecommerce providers' offerings. Section 846's intent is to allow the government to use ecommerce websites to acquire commercial, off-the-shelf items quickly, efficiently, and at competitive market prices.

Except it won't. At least, not the way it is currently planned. Instead, it would create a new oligarchy exempt from competition.

The solution is not closed portals, but general qualifications for any portal provider that wants to participate in the government market. Rather than letting selected providers know they no longer have to compete, opening the market to any commercial website that can meet appropriate government qualifications ensures open competition and a wide variety of options for government buyers.

Instead of conducting a procurement for these services, our recommended approach would allow GSA to establish a common set of qualifications and requirements. Interested providers could then be certified on their ability to meet the government's standards. A self-certification process would be the simplest

approach, but GSA could also handle this certification through a third party.

There is considerable precedent for the open market approach. For example, the Section 508 disability access process uses a common set of industry standards to determine whether information technology products meet certain accessibility requirements. Certification is relatively painless and is conducted by a third party, saving the government time and resources. The FedRAMP process for cloud solutions is another example involving third party accreditation and a "do once, use many" approval system.

Opening the federal market to approved providers in this manner is faster and less expensive than conducting a procurement. It is also far more competitive than selecting a handful of portal providers who no longer have to compete. In addition, it will help GSA meet Section 846 requirements much more quickly, driving savings earlier would otherwise be possible.

Due to the high barriers to entry for many specialized companies, certified portals are unlikely to be competitive with the entire free market. For example, the HASC summary lists COTS products as varied as bottled water, treadmills, and MRI equipment. These items are so distinct that if you get all three from the same place, it should make you wonder about at least one of them.

Specialization helps competition by allowing one retailer to provide the best deals and quality on bottled water, while a different retailer competes on treadmills, and so on. Competing per-product is far more effective than competing per-vendor.

In addition, there is unlikely to be a comparable analog in the commercial space for the government to determine whether its prices are actually competitive. Because this is a unique market, there will be no way to know what volume discounts could be unless the free market gets to compete for them.

One of the main questions at the meeting is whether the ecommerce portals would be subject to the numerous and labyrinthine federal purchasing requirements, many of which were implemented long before such portals were ever contemplated. For example, DOD has already partially waived the Buy American Act for COTS items, and there are several exceptions and reasons for agency waivers. While we recognize that the government does have some interest in supporting certain groups, tilting the playing field can also undermine competition.

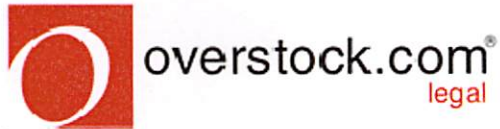
We are open to GSA and OMB's guidance on which federal purchasing requirements should still apply and which should be waived to be consistent with the streamlined ecommerce model. We are also open to a modification of federal purchasing requirements specific to COTS items, similar to what DOD has already done with Buy American.

Online commercial procurement is an idea whose time has come, and we credit HSAC, GSA, and OMB with the foresight to push this provision toward the finish line. Expanding commercial item contracting to the free market via online portals will achieve the desired goal of lowering prices, raising quality, and improving efficiency in a way that a handful of closed portals cannot. Accordingly, we recommend adopting that free market modification into the way GSA and OMB implement Section 846.

(Please see full comments in attached PDF)

Attachments

Overstock NDAA Section 846 Comment



Brock R. Lyle
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Jeffrey A. Koses
Senior Procurement Executive
Office of Acquisition Policy
Office of Government-wide Policy
General Services Administration

January 16, 2018

Dear Mr. Koses:

Overstock.com, Inc. is a large online retailer based in Salt Lake City, Utah. Overstock sells a broad range of consumer and business products at low prices, including electronics, furniture, office supplies, décor, rugs, bedding, and home improvement items. In addition, Overstock hosts a marketplace providing customers access to hundreds of thousands of products from other online vendors. Overstock supports the Special Operations Warrior Foundation, which funds education for Gold Star families, and is also an innovator in blockchain technology. Forbes has ranked Overstock in its list of the Top 100 Most Trustworthy Companies.

GSA/OMB should be open to changing from procurements to competition

Overstock is enthusiastic about the acquisition reform provision in the 2018 NDAA allowing for online marketplace portals (Section 846) and is grateful for the opportunity to have participated in the January 9, 2018 public meeting at GSA. One of the key questions asked at that meeting was, "Which portals should we approve?" However, this begs an important question: "Should we only approve certain portals?" This is where GSA and OMB should be open to a paradigm shift.

As we expressed at that meeting, Section 846 should not be so narrowly interpreted that it excludes most online business models and prefers certain ecommerce providers' offerings. Section 846's intent is to allow the government to use ecommerce websites to acquire commercial, off-the-shelf items quickly, efficiently, and at competitive market prices.

Except it won't. At least, not the way it is currently planned. Section 846 requires the GSA to certify "multiple" commercial website portals for government agency purchases of off-the-shelf items. However, certifying a handful of commercial website portals does not expand competition to the free market. Instead, this would create a new oligarchy exempt from competition.

General qualifications and open markets will improve price and quality

The solution is not closed portals, but general qualifications for any portal provider that wants to participate in the government market. Rather than letting selected providers know they no longer have to compete, opening the market to any commercial website that can meet appropriate government



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qualifications ensures open competition and a wide variety of options for government buyers. Such an approach will allow competition on a per-product basis instead of a per-retailer basis, which will keep prices lower and establish a realistic market for large quantity purchases.

Instead of conducting a procurement for these services, our recommended approach would allow GSA to establish a common set of qualifications and requirements. Interested providers could then be certified on their ability to meet the government's standards. A self-certification process would be the simplest approach, but GSA could also handle this certification through a third party.

There was also some discussion at the meeting around creating software to prevent Army privates from purchasing marijuana cookies with federal credit cards or procurement accounts. We believe the more appropriate control there is the private's commanding officer, but even in that situation, providers can assist with transparency. Commanding officers will be able to easily see purchases made, so the private would get caught and have to peel potatoes for a few weeks, which is a simpler solution and a more effective lesson than a blanket software block that could exclude many legitimate purchases along with illegitimate ones. Also, requiring ecommerce providers to create software that prevents unauthorized purchases or forces compliance with federal regulations would again be a significant hurdle for any online retailer to clear and would limit the pool of competitors.

There are existing precedents for open markets with industry standards as opposed to closed portals

There is considerable precedent for the open market approach. For example, the Section 508 disability access process uses a common set of industry standards to determine whether information technology products meet certain accessibility requirements. Certification is relatively painless and is conducted by a third party, saving the government time and resources. The FedRAMP process for cloud solutions is another example involving third party accreditation and a "do once, use many" approval system.

Opening the federal market to approved providers in this manner is faster and less expensive than conducting a procurement. It is also far more competitive than selecting a handful of portal providers who no longer have to compete. In addition, it will help GSA meet Section 846 requirements much more quickly, driving savings earlier would otherwise be possible.

GSA/OMB should welcome specialization as a way to drive down prices

Due to the high barriers to entry for many specialized companies, certified portals are unlikely to be competitive with the entire free market. For example, the HASC summary lists COTS products as varied as bottled water, treadmills, and MRI equipment. These items are so distinct that if you get all three from the same place, it should make you wonder about at least one of them.

Requiring vendors to be all things to all agencies creates a huge barrier to entry, because almost no companies can supply the breadth of products required. Specialization helps competition by allowing



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one retailer to provide the best deals and quality on bottled water, while a different retailer competes on treadmills, and so on. Competing per-product is far more effective than competing per-vendor.

In addition, based on the size of agency purchases, there is unlikely to be a comparable analog in the commercial space for the government to determine whether its prices are actually competitive. Normally, ecommerce providers are open to providing volume discounts, and with its volume, the federal government should be able to push for significant discounts in this regard. Because this is a unique market, there will be no way to know what such discounts could be unless the free market gets to compete for them.

GSA/OMB should consider which federal requirements to waive for COTS purchases

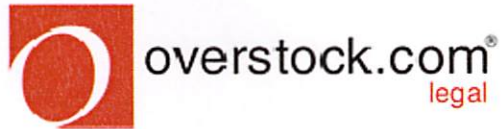
One of the main questions at the meeting is whether the ecommerce portals would be subject to the numerous and labyrinthine federal purchasing requirements, many of which were implemented long before such portals were ever contemplated. It is also worth noting that each agency has micro-purchase thresholds exempt from these requirements, and some agencies have waived requirements even beyond these thresholds. For example, DOD has already partially waived the Buy American Act for COTS items, and there are several exceptions and reasons for agency waivers. While we recognize that the government does have some interest in supporting certain groups, tilting the playing field can also undermine competition.

We are open to GSA and OMB's guidance on which federal purchasing requirements should still apply and which should be waived to be consistent with the streamlined ecommerce model. We are also open to a modification of federal purchasing requirements specific to COTS items, similar to what DOD has already done with Buy American. For example, to ensure the AbilityOne program stays competitive, it might be appropriate to add price proximity (within a certain percentage of prevailing market price) into the definition of "Essentially the Same" only for COTS items. At present, NIB's Essentially the Same Challenge Form says "price is not a valid challenge."

Another comparison repeated at the meeting was that the government was playing chess and ecommerce was playing checkers, with the implication being that ecommerce should have to play by the more complicated federal rules. However, one stated intent of Section 846 is to simplify COTS purchases, so perhaps the government wants to play checkers after all. Again, we welcome GSA and OMB's guidance here.

Conclusion

Online commercial procurement is an idea whose time has come, and we credit HSAC, GSA, and OMB with the foresight to push this provision toward the finish line. Expanding commercial item contracting to the free market via on-line portals will achieve the desired goal of lowering prices, raising quality, and improving efficiency in a way that a handful of closed portals cannot. Accordingly, we recommend adopting that free market modification into the way GSA and OMB implement Section 846.



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We remain open to assisting GSA and OMB throughout the investigation and implementation of this new program.

Sincerely,



Brock R. Lyle
Associate General Counsel
Overstock.com, Inc.

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Procurement Through Commercial e-Commerce Portals

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Comment on FR Doc # 2017-26964

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Submitter's Representative: Eminence Griffin

Organization: IT Alliance for Public Sector (ITAPS)

General Comment

Attached please find comments from the IT Alliance for Public Sector (ITAPS) on the implementation of Section 846 of the FY18 National Defense Authorization Act, Procurement Through Commercial e-Commerce Portals

Attachments

ITAPS Comments to Procurement Through Commercial e-Commerce Portals

January 16, 2018

U.S. General Services Administration,
Regulatory Secretariat Division (MVCB)
ATTN: Lois Mandell
1800 F Street NW, 2nd Floor
Washington, DC 20405-0001

RE: Procurement Through Commercial e-Commerce Portals

Dear Ms. Mandell:

On behalf of the leading providers of ICT hardware, software, services, and solutions to the public sector that are members of the IT Alliance for Public Sector,¹ we appreciate the opportunity to provide comments to the General Services Administration (GSA) as the agency seeks input on the implementation of Section 846 from the FY18 National Defense Authorization Act. We applaud Congress for passing such transformative changes to the procurement system and GSA for seeking industry input into the plan for implementation. For too long the system has been bogged down in proscriptive requirements for commercial products where there is little risk to the government purchaser. Our members offer a variety of solutions that GSA can utilize to implement Section 846. As such our comments are intended to be solution-neutral and instead offer characteristics for GSA's consideration as they move forward.

While the Federal Register notice points to a number of different questions as to how GSA and the Office of Management and Budget (OMB) should implement the provision, our companies believe that, before getting to these points, there continues to be a need to address several fundamental issues as to the premise of the provision before creating an implementation plan. Although these issues are fundamental to the procurement process, if addressed, the answers can improve access to commercial items for government customers.

Continue Outreach and Dialogue with Industry

We commend OMB and GSA for hosting the town hall meeting on January 9th. The forum provided and encouraged a productive exchange of ideas. We recommend holding additional industry days, as well as outreach to potential e-Commerce portal providers and stakeholders, in the coming months as the implementation plan is developed, and beyond, to ensure that those tasked with implementing section 846 have access to the ideas and expertise that industry can bring to bear.

¹ **About ITAPS.** ITAPS, a division of the [Information Technology Industry Council](#) (ITI), is an alliance of leading technology companies offering the latest innovations and solutions to public sector markets. With a focus on the federal, state, and local levels of government, as well as on educational institutions, ITAPS advocates for improved procurement policies and practices, while identifying business development opportunities and sharing market intelligence with our industry participants. Visit itaps.itic.org to learn more. Follow us on Twitter [@ITAlliancePS](#).

Competition Between e-Commerce Portal Providers Should Create a Robust Market for Government Buyers

Consistent with the language in Section 846, GSA and OMB should encourage competition among commercial e-Commerce portals. Such competition in the commercial sector has allowed for innovative solutions and incentives to lower prices. Encouraging entry of multiple e-Commerce business models can provide vendors and suppliers the power of choice as to which e-Commerce site to do business with and allow them to maintain negotiating power as to the terms of entering such sites.

Further, because the statute states that the government should use existing commercial e-Commerce portal standard terms and conditions to the maximum extent practicable (consistent with the requirements of the Federal Acquisition Streamlining Act (FASA)), the government should seek to maximize the use of commercial terms, conditions, products, and processes to make its e-Commerce portals as familiar to commercial vendors as possible. ITAPS believes that the government must determine how to balance maximizing commercial terms and conditions with the requirement to protect the interest of agencies and taxpayers. Therefore, we strongly encourage GSA consider these factors in its implementation and plan to award contracts to portals, solutions and business models of all types, in order to maximize the competition needed to achieve the benefits of dynamic selection and dynamic pricing that was envisioned by this provision.

Data Risks

Although the transactions envisioned here may not involve voluminous exchanges of confidential vendor information, data generated under the e-Commerce portals, as drafted, could have significant economic and security value to the stakeholders under the program. Vendor delivery terms; government spending and product use patterns; product delivery information; supply chain information, all, under the right circumstances, could be of monetary and security value to market competitors and international adversaries. The information associated with activity in the portals in isolation, may appear to be inconsequential, but when combined with other information, may create a mosaic of detail that puts either the nation or vendors at risk. For example, huge shipments of COTS items to a potential war zone might signal future government action that should not be disclosed.

While the statute has indicated that the portal providers must “agree not to sell or otherwise make available to any third party any information pertaining to a product ordered by the Federal Government through the commercial e-Commerce portal,” clarity should be developed specifically providing for the security and protection of that data. From ITAPS’s perspective, the Administrator should recognize the interests in information; to assure that, to the extent that information is possessed by the online marketplace provider, it remains secured; and to assure that the government receives just compensation for information it permits to be released through established and transparent fee arrangements.

Transparency in Fee Structure

While “[t]he conferees expect the Administrator to ensure that any contract of other agreement entered into for commercial e-Commerce portals under this program preclude such business-to-business arrangements,” the report does not fully address authorizations or limitations on fee constructs that would be acceptable and fit Congressional intent. We recognize that direct fees are commonplace, in some way, shape or form (e.g., placement fee, sales commission, preferred positioning), in existing commercial e-Commerce portals. ITAPS believes, however, that GSA should include in its’ assessments a full understanding of these various types of direct and indirect fee structures and look to foreclose fees as required by the statute in whatever form they may be assessed, as these also have an effect on vendor and product access to the market. To avoid the risk of creating significant barriers to entry and inequities in competition within the market, the Administrator should clearly delineate what elements must be included in contract language to manage how the portal provider is compensated and what basic expenses vendors can anticipate as a condition of their participation in these portals. While some portals currently disclose their fees for public knowledge, some do not and, in order to ensure transparency, transactional fees for each portal purchase should be disclosed as part of the final contracting arrangement.

Clarify and Streamline Compliance Requirements and Employ Risk Management with Regards to Requirements

Although the statute states that all procurement laws are applicable to the portals, the language also provides for GSA and OMB to determine “recommendations regarding whether any changes to, or exemptions from, laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government are necessary for effective implementation.” It is unclear how far-reaching these recommendations might extend through the procurement process, however, ITAPS notes that fundamentally, laws cannot be repealed by implication. and agency recommendation. Thus, before rendering any law inapplicable to the portal, Congressional action must be taken. This point is especially true in connection with priority of mandatory sourcing requirements under law, such as Federal Prison Industries and AbilityOne.

Furthermore, current statute requires that all purchases below the simplified acquisition threshold (SAT) be set-aside for competition between small businesses. This requirement is commonly referred to as the small business reserve. The language in Section 846 limits the purchases on these portals to values below the SAT, and thus, appears to limit the competitions to small business only. There is a question, however, as to whether GSA will recommend that the mandatory sourcing required by the small business reserve will be applicable to portal purchases.

Another point to include in the assessments undertaken by GSA is whether or not efficiencies can be achieved by providing access to the new e-Commerce portals for contractors offering services that must purchase COTS products in fulfillment of their contracts. By not allowing these contractors to fulfill these requirements, the Committee is creating an uneven playing field where the contractors are put at a disadvantage by having to meet stricter compliance burdens

for the same COTS products. We believe the Administrator should identify this disparity for the Congress for further attention as called for in the statute.

While the conferees indicated that the portals should emphasize small business participation and prevent suspended and debarred contractors from participating in the portals, there is not a clear determination as to whether the responsibility for compliance with these requirements and others falls on the portal provider, the vendor selling the specific product or the government buyer. Under a typical procurement process, the contracting officer would have to ensure their adherence to the FAR, including performing market research and awarding to a responsible bidder. Yet, a vendor or supplier may not know until an order has been placed that they are contracting with the government. Therefore, the government is in the best position to understand and comply with its requirements. If the government intends to rely on the portal provider to enforce compliance, that will be a deviation from commercial practices and, most likely, the commercial terms and conditions offered by the portal provider and the vendor. GSA should include in their assessments ways to identify and ensure compliance, including what software modifications may be necessary to ensure compliance, as well as how use open data architectures and application programming interfaces.

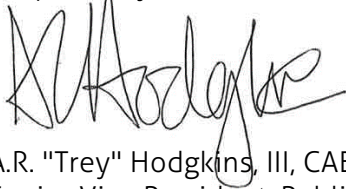
Another area lacking clear guidance for compliance regards cybersecurity. The concern is that non-compliant IT products may be inserted into a government or contractor system, which would create too high a level of cybersecurity risk to both the supply chain and the government mission. One way to mitigate this liability would be to require sourcing on e-commerce portals from original equipment manufacturers (OEMs) or their authorized distributors and resellers. GSA should assess which cyber requirements should apply to the COTS product transactions envisioned by the statute and collaborate with OMB to create cybersecurity and supply chain assurance guidance on the purchase of any IT products to ensure compliance and accountability with cybersecurity standards.

All Mechanisms for the Acquisition of COTS Products Should Enjoy Relief from Compliance Requirements

What is apparent from the statute is there continues to be concern that existing laws, regulations, and processes are affecting the "rapid purchases of goods at the best prices." What is not apparent is why government platforms offering the same COTS products are not afforded the same exemptions from law and regulation that are envisioned for the new e-Commerce portals. Several agencies operate government-e-Commerce platforms, and those platforms are the current channels through which the government accesses commercial products and services, and they represent the single largest avenue through which small businesses, after investing in those channels, serve their government. If there is merit in creating a waiver framework for the category of commercial-off-the-shelf (COTS) items purchased through commercial e-Commerce portals, then that waiver should be extended across that category of COTS items, wherever they may be offered to the government customer. The Administrator should include in the assessments conducted under this statute what steps would be required to include all COTS products and make recommendations to the Congress on how to achieve such a goal.

Thank you in advance for your consideration, and we look forward to future opportunities to continue the dialog on these issues. If you have any questions regarding the attached comments, please reach out to Eminence Griffin at egriffin@itic.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A.R. Hodgkins". The signature is stylized with a large, looped initial "A" and a trailing flourish.

A.R. "Trey" Hodgkins, III, CAE
Senior Vice President, Public Sector

PUBLIC SUBMISSION

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0768
Comment on FR Doc # 2017-26964

Submitter Information

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General Comment

On behalf of the member companies of the American Apparel & Footwear Association (AAFA), we appreciate this opportunity to submit comments to the General Services Administration (GSA) and the Office of Management and Budget (OMB) about Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals.

Please refer to AAFA's comments in the attached PDF.

Attachments

AAFA Section 846 Comments



740 6th Street, NW • Washington, DC 20001 | P: 202-853-9080 | www.aafaglobal.org

Advocacy that fits.

January 15, 2018

Mr. Matthew McFarland
Senior Policy Advisor
GSA Acquisition Policy Division

RE: Procurement Through Commercial e-Commerce Portals

Docket Number: GSA-GSA-2017-0002-0707

Submitted electronically at: www.regulations.gov

Dear Mr. McFarland:

On behalf of the member companies of the American Apparel & Footwear Association (AAFA), we appreciate this opportunity to submit comments to the General Services Administration (GSA) and the Office of Management and Budget (OMB) about Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals.

AAFA is the national trade association representing apparel, footwear, travel goods, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its nearly four million U.S. workers, and its contribution of \$384 billion in annual U.S. retail sales.

AAFA's Government Contracts Committee (GCC) brings together apparel and footwear manufacturers, as well as their textile and trim suppliers, with the military, their biggest customer. The GCC keeps members apprised of developments that bear on the needs and requirements of the U.S. military and other parts of the U.S. government with respect to the procurement of clothing and shoes, and the problems faced by the industry in its supplier relations with the government. A key focus of the GCC is the Berry Amendment – a staple of government procurement law – that requires all clothing and footwear purchased by the U.S. military to be procured using domestic sources.

AAFA welcomes GSA and OMB's implementation process of Section 846 Procurement Through Commercial e-Commerce Portals. We also commend GSA and OMB's willingness to establish an ongoing dialogue with industry and interested parties in Government throughout the program's implementation.

As GSA and OMB move forward in drafting the Phase I implementation plan, we would like to offer the perspectives of our members.

Berry Amendment Compliance Threshold

Members have raised concerns that Section 846, when applied in conjunction with a recent increase in the Simplified Acquisition Threshold (SAT), increases the likelihood that more textiles, apparel, and footwear will not be purchased in a manner consistent with the Berry Amendment. Such an outcome would undermine the remaining domestic textile, apparel, and footwear industry, and increase the chances of the U.S. military being supplied for such basic items by adversaries. As currently practiced, the threshold allows individual bases to procure many textile and footwear items on a base-by-base basis, nullifying Berry and eroding opportunities for the domestic industry.

AbilityOne Program

A vital part of our industrial base is met through the AbilityOne Program. With regard to the AbilityOne Program, the implementation plan should include:

1. A commitment by OMB and GSA to uphold the requirements of the AbilityOne Program (41 USC Chapter 85) and to consult with the U.S. AbilityOne Commission in carrying out the commercial e-commerce portals program;
2. Identification of the AbilityOne Program as an “existing program” that should be assessed for impact in Phase II; and
3. Acknowledgement that specific oversight protocols should be developed in conjunction with clear roles and responsibilities to ensure compliance with the AbilityOne Program in Phase III.

Securing the Supply Chain

As the government entices new suppliers and vendors to sell their commercial products through this portal program, it must maintain the integrity and safety of its supply chain. GSA and OMB must ensure that this program prevents the infiltration of counterfeit products into the supply chain through the commercial e-commerce portals. End users must be certain that the goods they are receiving are in fact made to specification and are, in fact, legitimate. The safety of the end user could be in jeopardy if certain critical items are not made to specification.

Small Businesses

The GSA Advantage compliance process is extremely complex. Many small businesses among our membership have devoted significant time and resources into this regulatory process in the hopes of access to Federal Government business. Depending on its implementation, this provision could push procurement away from small businesses specializing in government procurement and which have made considerable investment into becoming compliant bidders.

Trade Agreements

Similarly, our government procurement process is closely connected with our trade agreements program, through which we encourage other countries to open their markets in exchange for access to our own. This program benefits U.S. manufacturers by giving them access to other markets, and establishes disciplines on foreign companies bidding on U.S. contracts. What protocols are being developed to ensure that this system is not undermined? This procurement method could disadvantage U.S. manufacturers and our TAA compliant trade partners who have entered into agreements with the United States in the expectation of special access to US Government procurement.

Thank you for your time and consideration in this matter. I look forward to continuing this dialogue to improve the federal acquisition process of commercial items.

Please contact me if you have any additional questions at slamar@aafaglobal.org or via phone at 202.853.9347.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lamar', with a stylized flourish at the end.

Steve Lamar
Executive Vice President

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0767
Comment on FR Doc # 2017-26964

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Organization: Amazon

General Comment

Please see attached.

Attachments

Amazon Response FRN 2017-26964



January 16, 2018

ATTN: Lois Mandell
U.S. General Services Administration, Regulatory Secretariat Division (MVCB)
1800 F Street NW, 2nd Floor
Washington, DC 20405-0001

RE: Federal Register No. 2017-26964, Procurement through Commercial E-Commerce Portals

Thank you for the opportunity to provide written comments to the General Services Administration (GSA) and the Office of Management and Budget (OMB) as efforts are initiated to implement section 846 of the National Defense Authorization Act for Fiscal Year 2018, Procurement through Commercial E-Commerce Portals. Amazon commends GSA and OMB for their early outreach to the public for input into this process, and we encourage an ongoing dialogue throughout the implementation.

Customer obsession is the most important guiding principle at Amazon, and is what led us to develop Amazon Business, which combines the selection, convenience, and value consumers love with features tailored to the needs of businesses, including public sector organizations. Tens of thousands of government customers are already using Amazon Business and enjoying features that help maximize taxpayer value, such as workflow and purchase approvals, transparency into their spending, and assistance in identifying new diverse suppliers. Government customers benefit from the convenient commercial features Amazon is known for, like the ability to search, browse, and filter results, access product reviews and other rich product information, and fast delivery.

Based on our experience working with government customers, there are four key areas for GSA and OMB to consider in devising a successful implementation of section 846: using commercial terms and conditions and commercial practices, enabling robust competition, enhancing opportunities for small and disadvantaged businesses, and encouraging the availability of tools to simplify compliance.

First, Amazon strongly encourages that government be enabled to purchase from e-commerce portals under their prevailing commercial terms and conditions using commercial practices. Using prevailing commercial terms and conditions promotes efficiency and transparency and also conforms to the longstanding intent of commercial item acquisition reform. The use of standardized terms and conditions minimizes the need to negotiate one-off terms for simple transactions, thus improving efficiency, scalability, and the ability to add new features and products quickly. It also frees up time for government buyers to focus on complex acquisitions. The government should also adopt the commercial practice of establishing competition through the use of a competitive marketplace like Amazon Business.

601 New Jersey Ave., NW
Washington, DC 20001

Second, competition is a fundamental tenet of the acquisition system, and we encourage GSA and OMB to consider different models that enable robust competition as they implement section 846, which supplements existing purchase options available to government buyers. Adopting commercial terms and conditions, as well as minimizing the application of government-unique requirements, will help drive competition. Amazon Business enables real-time, dynamic competition with multiple parties able to offer the same item, making it easy for buyers to compare those offers and select that which best meets their needs. Third party sellers account for half of the purchases made on the Amazon Business marketplace today. As various e-commerce portal models are evaluated, GSA and OMB should consider the extent to which those models provide the benefit of competition for government buyers.

Third, GSA and OMB should also focus on the ways in which section 846 can enhance opportunities for small and disadvantaged businesses. At Amazon, our sellers are our customers too, and we constantly innovate on their behalf to bring them more value and to create opportunities to compete in our marketplace. Amazon Business includes AbilityOne products, as well as a seller credentials program that allows small business sellers to feature their federally recognized diversity and ownership credentials, and enables government buyers to achieve their diversity goals. In 2017, more than 300,000 U.S.-based small and medium-sized businesses joined the Amazon marketplace and now have the opportunity to reach millions of customers around the world.

Finally, GSA and OMB should consider the ways in which Section 846 can encourage e-commerce portals to help provide tools and mechanisms that make compliance easier for government customers. For example, Amazon Business provides spend reporting and workflow approvals so that government buyers have greater transparency into their spending, which facilitates compliance. It also provides a much more efficient process for buyers to comply with tax exemptions.

Section 846 provides a unique opportunity to enable federal buyers and taxpayers to benefit from the innovation that a marketplace like Amazon Business can provide. Thank you for your consideration, and we look forward to working with GSA and OMB on this important initiative.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Edelman', written over a horizontal line.

Kathryn Edelman
Senior Manager, Public Policy
Amazon

PUBLIC SUBMISSION

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Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0766
Comment on FR Doc # 2017-26964

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General Comment

See attached file(s)

Attachments

immixGroup_Section 846_GSA Comments_JME_Final_01-16-18

January 16, 2018

U.S. General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street NW, 2nd Floor
Washington, DC 20405-0001
ATTN: Lois Mandell

*Re: Procurement through Commercial E-Commerce Portals
[Notice – MV-2017-05; Docket No. 2017-0002; Sequence No. 25]*

These comments are submitted by immixGroup, Inc. (“immixGroup”), in response to the aforementioned Notice of a Public Meeting and Request for Information published in the *Federal Register* on December 15, 2017 (82 FR 59619).

immixGroup is the largest value-added distributor of enterprise IT products for the U.S. public sector marketplace. Thousands of federal, state, and local government agencies and educational institutions trust immixGroup to provide them with leading enterprise technology products from more than 350 suppliers through their preferred contract vehicles and a channel of more than 1,200 business partners across the country including solution providers, value-added resellers, systems integrators, and other public sector channel partners with the specialized resources and value-added distribution capabilities they need to accelerate their government sales while improving service to their government customers. immixGroup was acquired by Arrow Electronics in 2015 and now operates as Arrow’s public-sector arm, known as immixGroup, an Arrow Company.

Arrow Electronics is a global distributor of products, services, and solutions to industrial and commercial users of electronic components and enterprise software. Headquartered in Centennial, Colorado, with 2016 sales of \$23.8 billion, Arrow Electronics guides innovation forward for over 125,000 of the world’s leading manufacturers of technology used in homes, business and daily life. Through a network of more than 465 locations serving over 90 countries, Arrow brings electronics and information technology to enterprises in industrial and commercial markets including aerospace and defense, transportation, finance, health, and manufacturing. Arrow distributes products across many categories including lighting, power management, data center infrastructure, Cloud Services (public, private, hybrid, virtual), and the many new technologies of the Internet of Things. Arrow’s buying and selling platform with independent sellers also extends to redeploying, remarketing and recycling technology equipment, hence its marketing tagline, “from sensor to sunset.”

A subsidiary of Arrow Electronics, Verical, Inc., is the world’s largest electronic component digital marketplace. Verical organizes and sells on-hand electronic components from manufacturers and franchised distributors worldwide. Verical’s inventory spans over 2.5 million

SKUs from more than 800 leading manufacturers. The total stock, valued at more than \$13 billion, is sourced from electronic component manufacturers and their authorized channels. Verical allows suppliers to self-publish, with over 800 of the world's leading electronics manufacturers and their authorized channels publishing their unsold inventories on Verical's platform. All inventory published to Verical.com is 100 percent traceable and warranted by either the original manufacturer or Verical.

Introduction

immixGroup thanks the General Services Administration (GSA) for convening a stakeholder meeting on January 9, 2018, and for offering this opportunity to provide comments on procurement through commercial e-commerce portals.

As a threshold matter, immixGroup supports the underlying public policy rationale behind this initiative – that of streamlining and simplifying the federal procurement process, as well as improved tracking and analyzing of procurement data along with automating the task of fair and reasonable price determination for commercial items through real-time competition in digital marketplaces.

That said, as we expressed to the numerous congressional offices and committees who were interested in this initiative, the devil remains very much in the details. We associate ourselves with comments submitted to this docket by the National Association of Wholesaler-Distributors and the Coalition for Government Procurement.

immixGroup believes, among other aspects, that e-commerce portals/online marketplaces must be multiple and industry specific and utilize commercial channels of distribution. To that end, in this initiative, GSA must recognize, first and foremost, that the objective of ensuring a secure supply chain requires purchasing from third-party sellers that are authorized by manufacturers to sell their products. Only manufacturer authorized distributors can stand behind commercial warranties and guarantee that the items offered for sale are genuine and meet government procurement requirements. Consequently, e-commerce portals should be required to verify that any third-party seller placing items for sale on its e-commerce portal are authorized by the manufacturer to do so.

GSA must also recognize that complex IT solutions (e.g., cloud) (to the extent GSA determines such items are applicable for procurement via e-commerce portals) are best provided by specific wholesale distributor/aggregators whose business it is to implement manufacturer channel programs; it must address commercial terms for IT products (e.g., end user software licensing agreements) to avoid conflict with government procurement regulations; *and* must recognize the differences between consumer, enterprise, and public-sector market/requirements (e.g., appropriations, funding, unique order requirements).

This effort also requires a high-level architecture that we fear is missing in the conversation thus far. From our perspective, the term “portal” as it is used in the legislation is meaningless as it is no longer used as a term of art in the much more dynamic world of commercial digital marketplaces. Portals are not competitive marketplaces. A portal in our mind could connote the

enterprise Purchase to Pay (P2P) solution – the government’s link between its buy-side systems and the supply-side commercial electronic/digital marketplaces. With this perspective in mind we offer the following response to the specific questions posed in the Request for Information.

A. General Program Design

We recommend this conversation and the developing plans recognize that enterprise procurement such as that exercised by large commercial corporations and government entities is much different than consumer oriented buying. While consumers may simply go shopping and click “buy,” large enterprises must build this activity into their Enterprise Resource Planning, Purchasing and Financial systems. Thus, the government must first recognize that buy-side functions are separate and distinct from sell-side functions when it comes to enterprise procurement.

Modern enterprise e-commerce architectures employ buy-side services that implement all the enterprise’s rules and preferences.

Large enterprises, including the government, have mandatory supply items, supply source preferences, prohibited items, competition level thresholds, role-based purchase authority levels and a myriad of data and reporting requirements unique to the enterprise itself. These are system requirements that don’t exist for individual consumers and smaller organizations. These comments are voiced from the large enterprise perspective. Enterprise-level procurement system design starts with the need for articulating a bright line with clean, auditable interfaces between the buy-side (procurement) systems and the supply-side (marketplace) systems.

1. *Leveraging existing e-commerce portal providers*

“Procurement to Pay” (P2P) software is the term Gartner uses to categorize software used by the enterprise buy-side to engage with suppliers. The two most visionary and able to execute providers as ranked in the Gartner P2P Magic Quadrant are Ariba and Coupa¹, both of which we believe are talking with government agencies now. All the vendors in this category are racing to provide more and more capability for enterprise procurement portals and have become quite adept at interfacing with the growing number of specialized digital marketplaces on the supply-side.

The enterprise’s procurement rules and enforcement come through the P2P managed and programmed by the purchasing enterprise. The competitive marketplaces on the supply-side most commonly interface with the P2P through open-standard application programming interfaces (APIs). Within this enterprise architecture, authorized buyers can connect to any marketplace and buy items that meet all the criteria specified by the enterprise, in this case the government, through its P2P. In essence, the API, by defining the interfaces and the flow of necessary data elements, reflects, implements and enforces

¹ Gartner includes the following companies in its P2P Magic Quadrant (in alphabetical order): Basware, BirchStreet Systems, Capgemini, Coupa, GEP, Ivalua, Perfect Commerce, Proactis, SAP (Ariba and Fieldglass), and Wax Digital.

the rules in the P2P which are then articulated in the enterprise digital marketplace supplier agreements.

We recommend that any plan to purchase from digital marketplaces begin with a phased implementation of an enterprise P2P capability, considering all the different government systems requiring connections as purchase thresholds increase from micro-purchase to the simplified acquisition threshold by product category.

We don't see any current rules that apply to COTS items that cannot be addressed. Based on our experience as a supply-side marketplace in the electronic components category, this architecture would make it possible for commercial digital marketplaces to adopt the government API and open their system for the government's e-commerce P2P to connect as is happening between digital marketplaces and enterprises around the world today.

2. *Number of Portals*

From the buy-side, we expect the government would standardize on a P2P portal based on the commercial platform that offers the best ways to 1) integrate with the myriad of related government systems, 2) implement government procurement rules category-by-category, and 3) interface with commercial digital marketplaces using open architecture APIs.

From the supply-side, the number of digital marketplaces covering a particular category will wax and wane with the market dynamics of each product category. We expect product categories would be organized similar to how GSA's Category Management and Schedule Contracting programs are organized today. We also know that as technologies and industries evolve, marketplaces representing all the players will also evolve, so categories, because they reflect dynamic markets, will expand and contract over time. This architecture accommodates those market changes because it is not locked into any particular marketplace or group of marketplaces, any of which can easily be coupled if they meet the government's API for that category and just as easily de-coupled (locked out) if they do not.

Market research should include identifying all the commercial digital marketplaces in each of GSA's product categories evaluating each of them based on category-specific market criteria such as how many competing manufacturers does a marketplace include? Does it include manufacturer-authorized sellers able to stand behind the manufacturer's warranty and ensure delivery of genuine goods consistent with each manufacturer's authorized channel programs? Is it already integrated with leading P2P providers? Is it willing and capable of providing government all the data its P2P systems need via API?

If so, then let the digital marketplace participate. Our philosophy is that if a digital marketplace meets all the requirements and provides good service on every level the government would want to keep it connected and available for government purchasers. If it doesn't, the government should have the ability to disconnect, i.e., lock it out. This will work if the interconnects are open, the digital marketplaces are real, competitive

marketplaces, and the P2P is able to incorporate all the relevant procurement rules and all the data system plumbing.

3. *Implementation Phasing Approaches and Options*

We heard at the public stakeholder meeting that the government already buys from quite a few commercial digital marketplaces under the micro-purchase authority. Some are general marketplaces while others are highly specialized, i.e., industry specific. During the upcoming market analysis phase of implementation, the Administration should analyze data from all of these transactions to understand the government's use of digital marketplaces today across each of the GSA product categories.

We believe the results of analyzing current activity would be eye-opening and help inform both the government's overall goals for this program and the best enterprise architecture needed to achieve them. At this early stage, a P2P could be implemented within one product category², interfacing with all the digital marketplaces offering items within that category's PSCs (Product Service Codes).³

Once the P2P is operating with all the players in the pilot category under the micro-purchase threshold, additional rules, monitoring and auditing processes could be implemented to increase order thresholds and competition requirements of the Competition in Contracting Act (CICA) and the statutorily required reporting to the Federal Procurement Data System⁴ and the Past Performance databases.

At any point in time during the category pilot, marketplaces that include items from supply source preferences⁵, should be connected to the P2P and business logic to present those preferences in the priority order required in regulation. This should be started in partnership with the leading digital marketplaces in use today under the current micro-purchase thresholds. This way, development and integration with the marketplaces, the business rules, the privacy of contract issues, the preferences, the exclusions – everything – will be able to be tested in advance of increasing the purchase thresholds above the micro-purchase threshold. This will make current digital commerce visible to category managers, lawyers and contracting professionals on both the buy-side and the sell-side. We believe this is a prudent path for what will likely evolve incrementally over the five, 10, 15, even 20-year time horizons.

² We agree with certain comments made during the public stakeholder meeting, that non-configurable type products would be most suitable for acquisition through digital marketplaces (and a government pilot).

³ Please see the basis for GSA's categories at https://www.acquisition.gov/Category_Management as it's as good a category construct as any and is based on PSCs as the basis for all reporting required above the micro-purchase threshold.

⁴ The Data Dictionary for FPDS-NG is at https://www.fpds.gov/downloads/Version_1.5_specs/FPDSNG_DataDictionary_V1.5.pdf

⁵ The government-wide, statutorily required mandatory source hierarchy is implemented in regulation at FAR Part 8. Additional rules apply agency-by-agency where in the Department of Defense at DFARS 208.002 this mandatory source concept is used to require software buyers to look for Enterprise Software Agreements before purchasing.

Market research of the digital marketplaces serving each of the GSA Categories, mapped down to PSCs, performed by experts from both the buy-side and the supply-side would inform decisions as to the priority of which categories get implemented first, second, third and so on in the coming years.

The challenge for any large enterprise, including the federal government, is structuring their buy-side, the P2P side, not the digital marketplace supply side. This means that deciding on the right P2P for the government is the critical decision and should be done in a carefully conducted, full and open competition after the architecture, the business rule requirements, the back-end system interface requirements, the data mapping requirements and an implementation plan, along with best-value tradeoff criteria are all part of an open, robust market research and acquisition planning effort involving the leading providers of commercial enterprise P2P offerings. We understand that some parts of the government are using some of these types of tools today, so the upcoming market research should also include an inventory of that activity from the leading commercial P2P vendors along with the results achieved.

4. *Relationship between GSA, Government buyers, e-commerce portal providers, and sellers through portal providers.*

For the government to use commercial digital marketplaces above the micro-purchase threshold it will need a P2P to implement all the additional rules and interface with all the additional systems and then provide an open architecture API specification to the commercial digital marketplaces. We would hope the government would use a commercial P2P provider so that it utilizes a commercially available platform used by other enterprises of similar size and scope as the U.S. Federal Government.

This activity certainly seems consistent with the program authority granted in Section 846 as well as congressional intent. The statute, however, does not address the incredibly complicated procurement and financial system interconnections across the government that come into play above the micro-purchase threshold. Anyone who has seen the wall-sized representation of all those systems at GSA Headquarters knows this is an enterprise challenge that is going to require an enterprise solution to publish an open architecture API, which the leading digital marketplaces will want to adopt and by which they will open their systems up for government business.

If GSA runs the government's P2P, it will need to address the different finance and procurement systems in each agency. Perhaps it installs this capability for itself and the smaller agencies while publishing the architecture and APIs for use of the large agencies so they implement their own P2P but maintain consistent APIs so commercial digital marketplaces are not asked to make government agency-unique connections.

Now, to a potential model for establishing all the necessary contractual relationships between all the parties. This is a new world where the traditional Prime-Sub model of contractual privity will not work. We propose that the Administration consider the following four-layer model:

First, the government's P2P capability would include implementing its procurement rules (e.g., only TAA compliant items) out to the digital marketplaces via a published, open-standard API;

Second, each marketplace will agree to a GSA contract that includes maintaining their listings on the government's P2P via APIs and all the data elements required by product category. Terms that apply to all items within a subcategory, much like a SIN (Special Item Number) within a Schedule contract today, would apply on digital marketplace agreements. Such an agreement could include the named buy-side P2Ps (if agency-specific in addition to the one GSA operates). We do believe that GSA should maintain all the government API specifications centrally so that changes to the API by category and sub-category are maintained exactly the same for the entire government to ease integration with both the supply-side system and the government's backend finance, procurement and reporting systems;

Third, if the marketplace includes manufacturer-authorized sellers and an order is placed referencing a particular seller, privity of contract for the transaction is with the seller and includes shipment, advance ship notice (if applicable), delivery, invoice after acceptance, and would be the entity the government pays; and

Fourth, a digital marketplace agreement would flow each manufacturer's item-specific terms⁶ through to the buying entity defined in the P2P. If the marketplace is the only seller, like some we heard from at the industry meeting, then it has privity of contract for all orders.

5. *Relationship to existing programs*

Truly competitive digital commercial marketplaces capable of implementing a manufacturer's channel through authorized sellers will evolve for increasingly complex products in the next 10, 15, even 20 years so that eventually all products, even those requiring complex services will be available for purchase in conjunction with a local authorized service provider (seller) since statutorily services in support of commercial items are considered commercial items and as such, could eventually be included within the spirit of Section 846.

Today most manufacturers are well into the first phase of this by maintaining complete repair parts catalogs for access by P2P systems. In the electronic components industry,

⁶ While much of the focus seems to have been on the terms and conditions of the portal provider, depending on the nature of the COTS items being acquired by the government, the terms of either the manufacturer or its authorized reseller must be considered. For instance, the sale (license) of IT such as software, requires acceptance of End User License Agreements ("EULAs") just as it does now as part of the Schedules program. Further, since only a warranted Contracting Officer can bind the government, how will these get executed (accepted)? In short, GSA would be well advised to keep mind that while the acquisition of some COTS items will require no additional terms and conditions, other products will. At this point, we simply suggest that GSA may want to take this into account in deciding what items are appropriate for acquisition from digital marketplaces.

complete product lines are marketed in competitive digital marketplaces where buyers get to see everything that exists, and prices are competitive in real-time. These marketplaces are even able to facilitate professional services offered by manufacturer-authorized sellers in support of the products all in the same marketplace. Competition between brands and authorized sellers happens today in these marketplaces.

Other product categories, however, are not as far along the maturity path toward true digital marketplaces. In some categories, only refurbished items of certain brands show up on digital marketplaces. This is because the brand owners of those items have not yet authorized digital marketplaces to represent their new items. In some categories, manufacturers will allow certain items to appear on certain enterprise P2P portals, but not on an open digital marketplace. It's all up to the manufacturer, because legally, the manufacturer gets to decide its distribution channels.

Given that manufacturers get to decide their channels, the government, like all enterprises must be able to interface with those commercial channels as they evolve, just as delivery order contract vehicle programs do today. Since this evolution will likely take 10-20 years, we'll see it gradually replacing certain types of contracts as the government's buy-side systems mature and are able to take advantage of the offerings provided by ever more sophisticated supply-side systems. Continual market research from this perspective will need to occur within each GSA category management shop so that commercial digital marketplace maturity by PSC is analyzed annually.

We would suggest that the government will always be a bit behind most of the large commercial enterprises on the e-commerce adoption curve, but if the government gets its P2P program going and keeps it evolving it should only be a couple years behind best commercial practice helping to accelerate adoption by the laggards rather than holding back a large part of the market, or worse, creating a parallel, government-unique marketplace.

B. Buying Practices

1. Competition

P2Ps today can access all the competing items in a category made available to such systems and digital marketplaces by the manufacturer's channel program. Competition happens when the buy-side systems make it happen for the enterprise's buyers. That's why picking the right P2P and getting integrated is key. Just like in regular contracting, the amount and quality of competition is largely the result of pre-procurement activities.

Just as we know from our traditional procurement experience that there are big differences from one product category to another, so too are there large differences between specialized digital marketplaces serving different product categories. We envision that GSA's category managers would grow to understand and appreciate these differences and that in concert with contracting officers who also have product category expertise, like we have today in the schedule contract divisions, we will build ecosystems of category-specific digital marketplaces providing the government visibility to everything that is available in the commercial marketplace that also meets all the

government restrictions in supply source preference order. We also envision that some categories may have lower thresholds to certain level of price analysis than others, all of which can be set in the P2P.

2. Pricing, delivery and other terms of sale

In this subsection we return to our **four-layer contracting model** because the traditional Prime/Sub model that is wholly appropriate for large government-unique contracts is too simplistic when there are multiple parties responsible for different things and no one party can control or be responsible for everything.

First, the government's agreement with its P2P provider is going to include implementing the rules out to the digital marketplaces. It will connect with any, and all digital marketplace sources that meet the government's requirements as defined in the GSA Digital Marketplace Supplier Agreement.

Second, for any digital marketplace to interface with the P2P, it will negotiate an agreement with GSA for each subcategory of products it represents commercially and wants to make available for connection to the P2P via the government's open standard API, which will also include those additional statutorily required government data elements.

At this layer, the agreement and the API will match. Each will implement and enforce the other. Think of the contract terms as data elements, that of course, will need to be explained in paragraphs of legal text but that will need to be constantly updated synchronous with each marketplace's updates to its baseline commercial API.

Understanding each marketplace's commercial data elements is baseline market research. The P2P vendor will already be implementing this globally for its other large enterprise customers. This effort will be constant, not unlike keeping a schedule contract current with commercial product, pricing and terms today.

Additional government-unique data elements required to address statutory requirements like country of origin, if not already included in the marketplace API, will be required for orders above a certain threshold. As commercial digital marketplaces and the P2P vendors respond to government-required data elements these will get baked in as a matter of practice for all and will cease to be thought of as government-unique. It's just another data field at the part number level just as it is today in most commercial manufacturer's price list databases now that we have those data flows established to keep our schedule contracts current automatically.

Our examples of data elements at the category level are things we already deal with today. On the electronic components side of the business, we have to implement strict Return Material Authorization provisions lest a buyer take shipment for an order of chips for a manufacturing run, and then, as is often the case, needs to return those that are unused. Sadly, this return process has been an opportunity for returning counterfeit or tampered goods instead of the originals, and so our systems must detect and prevent this

from happening. This contractual “term” is reduced to data and is enforced in the system for all products regardless of manufacturer or selling party represented in the marketplace. Such “terms” exist today in specialized category-specific commercial digital marketplaces and would naturally flow to the government as well at the marketplace, i.e., category/subcategory level, just as schedule contracts do today at the SIN level.

One warning: historically, the government tends to freeze its terms and gradually separate itself from current commercial practice. This layer must be defined as baseline commercial, always current with commercial, with additional government-unique elements that are reviewed each time the commercial digital marketplace or the commercial P2P buy-side vendors adopt a change commercially. This must be set up in a way such that no one person within the GSA can hold up implementation like contracting officers rightly do today when confused or uncertain given their unlimited authority coupled with personal liability.

Third, where manufacturer-specific terms and conditions exist⁷, the digital marketplace agreement would flow each manufacturer’s item specific terms through to the buying entity defined in the P2P. Such terms include the manufacturer’s warranty, license grant, service level terms, return materials authorization, and so on. Manufacturer, product-specific commercial terms that violate federal law would be flagged and addressed in the digital marketplace agreement just as such terms are addressed in Schedule contracts today through the now famous (or infamous) “GSA Fail Chart”.

This currently occurs with respect to IT products on GSA Schedule contracts, most notably Schedule 70, where end user license agreements (EULAs) are provided to the government for review, negotiation and incorporation into a GSA order. The same kind of thing is happening, appropriately, within other SINs and would need to happen at the product level on a digital marketplace agreement.

But to be clear, this requires an abstraction layer, like the “Fail Chart” for identifying commercial software license terms not applicable to the federal government because they violate specific federal statutes. This thing we call the “virtual layer” is the opposite of having a contracting officer making yay or nay decisions as part numbers change in the marketplace.

If the marketplace is the only seller, like some we heard from at the industry meeting, then it would have privity of contract for orders it receives; however,

Fourth, if the marketplace includes manufacturer-authorized sellers and an order is placed referencing a particular seller, privity of contract for that order is with the seller who is then responsible for shipment, advance ship notice (if applicable), delivery, and invoice after acceptance.

⁷ Again, as with configurable type items, we would ask GSA to consider whether COTS items that require the government’s acceptance of additional product/manufacturer specific terms and conditions are appropriate for acquisition through online digital marketplaces (or at least appropriate at initial stages of implementation).

Those commercial digital marketplaces including manufacturer-authorized sellers, would be subject to an additional section in the GSA digital marketplace agreement, similar to the authorized dealer concept in schedule contracts today. We would want each digital marketplace to be able to provide GSA proof from each manufacturer as to the scope of manufacturer authorization of each seller to prevent unauthorized sellers from entering the government's supply chain. This would be implemented in the API, and, we predict, would become a feature appreciated by most manufacturers, channel partners and enterprises in those markets where it is not already commercial practice.

When a buyer selects an item from a seller other than the marketplace itself, the seller becomes responsible for accepting the order, fulfilling the order, and processing payment. For purposes of FPDS reporting, that seller would be considered the "prime" because they transacted the business with the customer, even though the digital transfer of the money would flow from the particular agency finance system, through the P2P to the marketplace, and then to the various parties involved. The very common Assignment of Claims process allowing a financial institution to be the payer, which then splits the money out to the various players, may facilitate an automated, auditable process that is both legal and scalable.

This multi-party privity question around "who is the prime" is something we have had to deal with when the contract holder is not the manufacturer, the licensor, or the Cloud service provider. We've found ways to make it work even while implementing manufacturer's channel programs with their networks of authorized sellers. We believe these concepts apply in this new world, but recognize that they will need to be reduced to data elements and data flows implemented through open API interconnects without human intervention.

We're not sure whether this model requires any tweaks to current fiscal or procurement law. We do believe that part of the plan for the next several years should recognize that an incremental approach to changing existing law will likely be needed. Our recent five-year journey in world of counterfeit electronic parts included statutory provisions and changes for each of the NDAs from 2012 through 2016. If detection and prevention of counterfeits within one product category took five years and the law is still not completely implemented in regulation, surely statutory changes to facilitate adoption of ever-evolving digital marketplaces across the wide spectrum of commercial item categories should be reasonably anticipated to take a decade or more.

3. Compliance

Our recommendation is to address each compliance issue category-by-category, more likely by sub-category in light of the existing marketplaces and their commercial practice. This market research would include asking those marketplaces, along with the leading

P2P vendors how they could address each government compliance concern in data via the API.⁸

GSA should start with those marketplaces already serving the government under the micro-purchase threshold. We understand that many of them would like the government to simply raise the purchase thresholds to extend their ability to handle larger orders under this authority. We disagree. We know that certain marketplaces and certain P2P's in certain categories envision handling most, if not all, the government unique purchasing requirements including all of those raised at the public meeting within their commercial architecture.

We recommend that GSA conduct market research in teams that include experts who know a product category from both the sell-side and the buy-side, from both the private sector and the public sector across the business, legal and finance layers of contracting.

We repeat: the simple Prime-Sub concept of contractual privity should not be the frame through which we articulate the new contractual architecture required for this new product distribution (sell-side) and supply chain (buy-side) architecture. This is why we articulated our four-layer model earlier in these comments. We believe it provides a potential framework upon which can be hung all the concerns we envision within the context of the technology vision that all the commercial enterprise players we know embrace.

We would add that within this architecture there is the potential for more clarity and less ambiguity than under the current contracts for commercial items that attempt to leverage the commercial channel. We also would encourage participation by the Inspector General throughout this process collaboratively to identify things to audit to assure system integrity so that all players will know what might fall under government audit.

4. *Considerations for small businesses, socio-economic programs and mandatory sources*

Here again, we believe our four-layer model can implement these programs as they apply to products (things get murky when services are involved). The small business preference rules for products tie back to the product manufacturer's size as defined in the SBA size standard for each industry and sub-industry listed in the North American Industrial Classification System. The NAICS code structure is the business census taxonomy of our economy so it's a "commercial system" that all manufacturers map to. GSA maintains another taxonomy at the item level organized by Product Service Codes (PSC) and a map to the NAICS. The government would need to require that both of these codes be provided by marketplace providers for each product offered within the specification of their API. The buy-side P2P would contain the internal logic to validate

⁸ For instance, if a certain COTS item on a digital marketplace was not compliant with the Trade Agreements Act, the system would have been programmed to automatically preclude a government buyer from acquiring it, perhaps by "greying out" the item or it not even showing up in a search, depending on how the government writes the API.

the codes and validate the size standard of the manufacturer. Tagging items this way is also required for reporting to FPDS.

The Government's socio-economic policy to use its buying power to give socio-economically disadvantaged a leg-up is subset of the small business policy allowing agencies to restrict competition for a particular procurement to only those companies in a particular disadvantaged class where the agency has determined that more than one member of that class is capable of performing the work. A government API could implement this by showing buyers only those items manufactured by a particular socio-economically disadvantaged class of company.

The bright spot, in our opinion, is for the mandatory sources community. P2P systems have always been able to promote enterprise preferences for their buyers. This should be easily attainable if those mandatory sources and their items are resident in a digital marketplace to which a P2P can connect via industry standard APIs. We won't belabor this point. It's not a big deal for the right P2P and all of that should be explored and documented in the market research phase.

5. *Supplier and product performance*

Past performance is critical in all enterprise purchasing systems including the government. Here again we reference the four-layer model discussed above so we are compiling a performance track record on each entity involved. In other words, each activity performed at each layer should tie to the entity in control of the performance of that activity.

For example, it is not helpful to buyers if the P2P portal provider is not delivering competitive offerings across the multiple digital marketplaces serving the commercial marketplace in a particular product category. The breadth and depth of those offerings and the completeness of them compared to what comparable global enterprise buyers get to see resides at that level.

At the digital marketplace layer, it is not helpful if a particular marketplace is often off-line, its marketplace is not competitive, and its transactions slow. Measurement of factors like that should be visible through the P2P portal in real-time, but the performance responsibility is with the digital marketplace.

If the digital marketplace is the only seller, then it too is responsible for order processing, shipping, and invoicing. If the items are ordered through a manufacturer-authorized seller, then that responsibility falls to the authorized seller. These "fulfillment" activities are critical to a customer and they should be measured as they are the functions required at the "prime contractor" level in delivery order contracting.

However, we would add that these new systems facilitate an incredible amount of detail from pre-order to post-order, much of which bears on performance, but probably will not fit into the structures of the current statutorily required past performance databases. That doesn't mean it should be discarded, but it will be up to the buy-side (i.e., government) and its P2P to share that with its buyers.

And finally, at the fourth layer, we get to the product itself. Most digital marketplaces today that serve specific product categories have users that share volumes of great feedback and insight at the product level. They do so because they are part of that community, be it the electrical engineers, commercial photographers, yacht owners, fleet managers, heavy equipment mechanics, or office managers. They all use these systems to access everything available within their world, and they are not shy with their feedback. This should all be available to government buyers too within the P2P via the full inclusion of all the relevant digital marketplaces within each product category.

6. *Responsibility of platform sellers*

Use of the word “responsibility” here brings to mind the meaning of that word in the context of government contracting, usually referring to capability and a track record of demonstrating that capability while conducting business ethically.

We expect that the commercial product based P2P platform provider would be a prime contractor following a full and open contracting process that would include a full complement of responsibility determination befitting of a major program contract.

At the digital marketplace layer, some of the typically gray area associated with responsibility determinations and past performance reviews is less murky because everything is reduced to bits and bytes in the API. But responsibility will extend beyond the system-defined and monitored functions to things like how many manufacturers are included? Is the marketplace deep enough to warrant a connection? Does the marketplace carry everything the manufacturer wants it to, even those items that may be low-margin? Is the marketplace always current in real-time both in terms of product, product availability, accurate ship dates, current pricing, current promotional pricing, current enterprise negotiated pricing, shipping options, advance ship notice, accuracy of order processing and integration with sellers (if applicable), and accuracy of invoicing if payment terms are extended?

In some cases, the marketplace will be the seller and in some cases not. Regardless of which entity the seller is, it must be able to execute on everything promised in the digital marketplace, some functions of which are listed above. This points out the need for what we call a top-down responsibility concept even as creation of the marketplace happens bottom-up.

Consider that it is the manufacturer, and only the manufacturer that can control its channels of distribution; who they are, what they are required to do, their territory, etc., in short, everything but how much their channel partners charge an end customer.

These authorized sellers, then, have some degree of autonomy within their authorization agreement. Some may be granted the authority to represent the manufacturer’s products on the seller’s digital marketplace. Others may only be authorized to participate with digital marketplaces the manufacturer has chosen. Some may opt to not participate in the digital economy, representing products the way they see fit. All options are possible, but

they are determined by manufacturer authorization. So, from the government perspective, this seems bottom-up.

From the buy-side, enterprises usually think top-down. The enterprise gets to dictate the rules, implement the buy-side portal, choose the supply-side partners, negotiate enterprise discounts, demand certain terms, punish and reward various behaviors. All of this can happen in the case of the government, but it needs to recognize that the commercial supply chain is really built bottom-up, so the government needs to re-orient its default thinking to recognize that it should include manufacturers in this conversation category-by-category in addition to all the intermediaries, marketplace providers and hopeful government contractors.

In summary on this point, we hope that the responsibility, past performance and accountability and auditability functions be applied appropriately at each layer once this framework or some other is adopted based on rigorous category-by-category market research with teams from both the public and private sectors, both the buy-side and the sell-side across the business, contracting and legal spectrum.

Again, immixGroup thanks the GSA for the opportunity to provide comments in this initial planning stage of the Section 846 e-commerce portal implementation. immixGroup looks forward to further engagement with the GSA on improving the federal procurement ecosystem.

Respectfully submitted,



Jeffrey Ellinport
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Docket: GSA-GSA-2017-0002
GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0765
Comment on FR Doc # 2017-26964

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General Comment

Thank you for providing us with the opportunity to provide input on Procurement Through Commercial e-Commerce Portals. The document we have uploaded contains our comments.

Attachments

3M Section 846 Input 2018-01-16

January 16, 2018

Lois Mandell
General Services Administration
1800 F Street, NW
Washington, D.C. 20405-0001

Subject: Procurement Through Commercial eCommerce Portals

Dear Ms. Mandell,

3M Corporation appreciates the opportunity to provide comments regarding Section 846 of the 2018 National Defense Authorization Act. 3M is a U.S. based manufacturer of a wide variety of commercial products covering consumer, healthcare, and industrial markets. We have been proud to provide these products to the Federal Government; doing so through a variety of channels including numerous eCommerce portals.

Below is our response to your initial request for industry input. We support the goal of improving the acquisition of commercial products represented by Section 846. As this effort moves forward, we welcome the opportunity to provide additional input.

- Number of Portals. Commercial markets operate with multiple eCommerce portal providers. This enhances competition, which can help the Government improve pricing for the products it seeks to acquire.
- Best Value. Purchasers derive value from commercial products through a combination of factors, such as the product's features, warranties provided by the manufacturer, and the reliability of the manufacturer's products – not simply through the price they pay. eCommerce portal providers should provide buyers not simply with information about prices, but also the additional information they need to effectively make best value determinations based upon their needs.
- Changes to Existing Acquisition Frameworks. The current acquisition framework contains numerous laws and regulations that do not apply to commercial marketplaces. Several of these decrease the efficiency of the acquisition process for both buyers and sellers while providing little value in return. GSA should consider providing relief from these, if it seeks to emulate the efficiency and effectiveness of commercial marketplaces. However, regulations that provide meaningful value, such as those that help safeguard the U.S. industrial base should be retained.
- Purchase Data. If the government implements a model in which eCommerce portal providers are allowed to use transaction data for purposes other than facilitating the immediate transaction, then provisions should be made for portal providers to share data with their suppliers about the purchases of their products. The sharing of this "point of sale" (POS) data is common in many commercial marketplaces and helps suppliers serve the organizations that purchase their products more effectively. For

example; by improving how quickly a supplier can reach purchasers with updated product safety information.

- Counterfeit Goods. All customers of commercial products have a reasonable expectation that they receive the actual products they purchased – not fake counterfeit versions. However, for many government applications there is a heightened need to keep counterfeit products out of the supply chain. For example, if the government received counterfeit products that it was planning to use in military MRO applications this could negatively impact military readiness and endanger our warfighters. This is why it is important for GSA to have portal providers incorporate reasonable controls to reduce the risk of government buyers receiving counterfeit products.

Sincerely,

A handwritten signature in cursive script that reads "John Sebastian".

John Sebastian
Manager Strategic Initiatives.

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Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0764
Comment on FR Doc # 2017-26964

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Organization: Walmart

General Comment

Please see attached comments submitted on behalf of Walmart.

Attachments

Walmart Comments - Jan 16 - to File

Procurement Through Commercial e-Commerce Portals
Comments of Walmart
GSA Docket No. 2017-0002, Sequence No. 25
82 Fed. Reg. 59,619 (Dec. 15, 2017)

Submitted via *www.regulations.gov* on January 16, 2018

We appreciate the opportunity to provide these comments as GSA and OMB conduct the first phase of implementing Section 846 of the FY2018 National Defense Authorization Act (“the NDAA”). Our responses correspond to the alphanumeric paragraph designations in the Federal Register announcement, 82 Fed. Reg. 59,619.

A.1: *Leveraging existing e-commerce portal providers.* What relief from applicable laws, Executive Orders, regulations, and policies is necessary for portal providers to want to enter this marketplace?

Response: We recommend that GSA and OMB ensure that any decisions about laws, Executive Orders, regulations, and other policies are consistent with the ongoing review of these same issues by the Secretary of Defense. Pursuant to Section 849 of the NDAA, the Secretary of Defense must conduct an analysis by December 2018 to determine whether, and to what extent, to provide relief for contracts and subcontracts for commercial and commercially available off-the-shelf (“COTS”) items. Specifically, the Secretary must “review determinations of the Federal Acquisition Regulations Council ... and propose revisions that provide exemptions unless the Secretary determines there is a reason to not do so. ... [and] to review regulations not required by law or executive order for acquisition of commercial items under part 12 of the Federal Acquisition Regulation and regulations relating to acquisition of commercial-off-the-shelf items. In both cases, the Secretary is required to propose elimination of the reviewed regulations unless the Secretary determines there is a specific reason to retain them.”¹

In light of this comprehensive analysis, and because the Department of Defense is a critical stakeholder in the Section 846 e-commerce initiative,² we encourage GSA and OMB to defer decisions on these issues until the Secretary of Defense submits the Section 849 report, so they can ensure consistency and efficiency.

Many companies, including Walmart, have voluntary policies that accomplish—and sometimes outpace—the government’s socioeconomic objectives. For example, Walmart offers a starting wage rate of \$11.00 for our hourly associates, a rate that exceeds the minimum wage for federal contractors under Executive Order 13658.³ These policies are in place as a result of market

¹ Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 2810, sec. 849, November 2017.

² *See id.* at sec. 846 (“The conferees further direct the Administrator to take great care in selecting which federal agencies and departments participate in the initial rollout phase with the expectation that the Administrator will include the Department of Defense.”)

³ As of January 1, 2018, the federal rate is \$10.35 per hour. *See* 82 Fed. Reg. 43,409 (Sept. 15, 2017).

dynamics, business ethics, and a commitment to corporate responsibility. In other words, companies can help the government achieve laudable social policy goals without being subject to the panoply of laws, regulations, and policies applicable to federal government contractors.

A.2: *Number of portals.* What factors should GSA take into consideration when determining the appropriate number of contracts to award to portal providers? Would it be appropriate for GSA to seek to limit overlap of product categories and/or make award to a single portal provider for a product category? Does such a [comparison-shopping] model fit into a COTS marketplace?

Response: Government customers can realize the greatest savings in a market with thriving competition. This principle applies both *within* a portal, where a number of vendors compete to sell products, and *among* portal providers. Accordingly, GSA and OMB should promote an e-commerce ecosystem with three or more portals, and should minimize -- or eliminate -- artificial distinctions that could lead to a single provider dominating the marketplace.

A.3: *Phase-In.* Should GSA take an incremental approach to the roll-out of the program?

Response: Yes. Given the complexities involved with designing and implementing this new initiative, we recommend a phased roll-out, in order to ensure functionality and maximize competition.

We recommend that GSA and OMB focus initially on products at or below the micro-purchase threshold, as adjusted by Section 806 of the NDAA (*i.e.*, \$10,000). That pilot would allow stakeholders to analyze data and take appropriate action as procurements through the commercial e-commerce portals scale up to the statutorily authorized levels in Section 846(i) (*i.e.*, up to the simplified acquisition threshold).

A.4: *Relationship between GSA, Government buyers, e-commerce portal providers, and sellers through portal providers.* What is the commercial practice for the privity of contract between e-commerce portal providers, sellers through portal providers, and buyers? Who should have privity of contract under the program? Should the portal provider have privity of contract with the sellers? Should the Government buyer have privity of contract with the seller through the portal provider?

Response: In general, the commercial practice involves two distinct contractual relationships: first, the sale between the seller and the purchaser; and second, the relationship between the portal provider and the seller. In other words, although a portal provider sets contractual rules to allow sellers to sell products on the portal, the purchase and fulfillment of a product from a third-party seller is governed by that third party's own, separate, contractual relationship with the buyer. The portal provider is not a party to that transaction.

We recommend maintaining this commercial structure in the Section 846 context. Preserving current commercial practices avoids unneeded complexity and uncertainty, and minimizes barriers to entry, thereby maximizing participation and competition. This is consistent with congressional intent, as the NDAA conferees encouraged GSA "to resist the urge to make changes to the existing

features, terms and conditions, and business models of available e-commerce portals, but rather demonstrate the government's willingness to adapt the way it does business."⁴ Moreover, as Chairman Thornberry explained in releasing the legislation underlying Section 846, a key rationale for the authorization is to leverage commercial practices to enhance efficiency and agility for government buyers: the initiative "drives efficiency through competition, and ... [a]uthorize[s] the Department [of Defense] to buy commercial off-the-shelf-items through the same online marketplaces that businesses use to acquire goods."⁵

B.2: *Pricing, delivery and other terms of sale.* How do commercial firms establish pricing, delivery, and other terms of sales when buying COTS products through commercial e-commerce portals? Should the Government's commercial e-commerce portal program allow GSA and/or Government buyers to negotiate discounts from stated prices and other concessions, as is done under the Federal Supply Schedules contracts? Alternatively, should Government buyers be restricted to a "take it or leave it" approach that limits customers to the prices sellers offer commercial customers based on the competitive pressures of the platform? How does the relationship between the e-commerce portal provider and supplier drive the approach?

Response: We encourage GSA and OMB to leverage the competition inherent in the marketplace to drive the prices offered to government buyers. Allowing multiple firms to compete for government business -- and publicizing those prices -- maximizes transparency; is consistent with commercial practices; and reinforces the policy objective of leveraging those practices for government purchasing. The marketplace and competition will yield the best value for all purchasers, including government buyers. Additionally, we note that the Conference Report directed the Administrator "to be judicious in requesting exceptions."⁶

B.3: *Compliance.* What is the commercial practice of e-commerce portal providers for monitoring compliance with applicable laws/regulations and supply chain risk management of sellers through the portal? To the extent that purchases made through the portal are subject to certain Government-unique requirements, who should be responsible for ensuring compliance (*e.g.*, the platform provider, the seller, the government buyer, other)?

Response: As noted in the response to question A.4, the appropriate focus for compliance is the relationship between the buyer (*i.e.*, the government) and the seller who provides the goods. To the extent that the government has particular sourcing requirements, it is in the best position to articulate those requirements and ensure that its agents comply with appropriate rules when purchasing COTS items. This is consistent with the conferees' directive "to resist the urge to make

⁴ *See id.*

⁵ Mac Thornberry, Chairman Thornberry's Defense Acquisition Reform Proposals for FY18, May 18, 2017.

⁶ Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 2810, sec. 846, November 2017.

changes to the existing features, terms and conditions, and business models of available e-commerce portals, but rather demonstrate the government's willingness to adapt the way it does business.”⁷

⁷ *See id.*

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GSA General Notices - 2017

Comment On: GSA-GSA-2017-0002-0707
Procurement Through Commercial e-Commerce Portals

Document: GSA-GSA-2017-0002-0763
Comment on FR Doc # 2017-26964

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General Comment

UL respectfully submits the attached comments on GSA's potential use of commercial e-portals in their procurement activities.

Attachments

18.01.12 UL Comments to GSA on e-Portals_Final



SUBMITTED ELECTRONICALLY VIA REGULATIONS.GOV

January 16, 2018

Office of Acquisition Policy
US General Services Administration
1800 F Street, NW.
Washington, DC 20405-0001

RE: ***Procurement Through Commercial e-Commerce Portals (GSA Docket ID: 2017-0002; Sequence No. 25)***

On behalf of UL LLC, I am pleased to submit comments with respect to the General Services Administration (GSA's) Request for Comments on Procurement Through Commercial e-Commerce Portals (Docket No. GSA 2017-0002; Sequence No. 25).

UL is a global, independent, safety-science company that has championed progress and safety for more than 120 years. Guided by our mission, UL's 14,000 professionals promote safe working and living environments for all people. UL uses research, standards, and conformity assessment to continually advance and meet ever-evolving safety challenges, and partner with businesses, manufacturers, retailers, trade associations, and international regulatory authorities to provide solutions and address the risks of increasingly complex global supply chain.

UL believes that governments can leverage their purchasing power to advance public policy in their jurisdictions in a manner that enhances competition, ensures reasonable pricing, and ensures compliance to existing regulations and initiatives through the use of commercial e-commerce portals. Conformity to UL standards, whether they have been focused on safety or performance, have been critical to the Federal government's purchasing efforts throughout the years.

As UL has grown, so too have the tools and resources that we offer clients and stakeholders. Recent UL investments have focused on developing tools to provide purchasers with accurate and reliable technical information to better facilitate and streamline product procurement, while continuing to offer the level of trust that has been synonymous with UL throughout our 124-year history. UL Prospector is one such tool that spans ten material and ingredient industries and offers users accurate, reliable technical information for hundreds of thousands of products from suppliers around the world. Another tool, UL WERCSmart, is used by leading retailers in the US to organize, analyze, and share sensitive product information to collect and assess sustainability attributes of products, and ensure compliance with local and federal regulations. Most recently, UL SPOT was introduced to provide purchasers with credible sustainable product information to help meet green building and green purchasing goals. In all, UL applications support more than 2.6 million users, 17,000 manufacturers and 125 retailers across 10 industries and receive more than half-a-million views each month.

One of the major challenges that GSA will face in implementing their use of commercial e-commerce portals is the issue of ensuring that products that purchasers buy are both genuine and compliant to the myriad of requirements and policies that the Federal government has in place. Whether it is

industrial fans, iPhone adapters, or hoverboards, UL has found hundreds of thousands of products per year bearing counterfeit UL marks and have worked with our partners in manufacturing, law enforcement, and Customs and Border Protection to remove these products from the market.

As the General Services Administration develops its implementation plans for the use commercial e-commerce portals and conducts its market research, UL stands willing and able to work with GSA to ensure that only genuine, compliant products are offered through these commercial e-commerce portals. UL welcomes the opportunity to work with GSA and OMB on these important issues. If you have any questions please contact Derek Greenauer (derek.greenauer@ul.com), Director of UL Global Government Affairs.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Weeks".

Ann Weeks
Vice President, Global Government Affairs
UL LLC

PUBLIC SUBMISSION

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General Comment

See attached file(s)

Attachments

RILA e-Commerce Commercial Procurement Portal Comment Final

January 16, 2018

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Lois Mandell
1800 F Street, NW, 2nd Floor
Washington, D.C. 20405-0001

Re: Procurement Through Commercial E-Commerce Portals
[Notice – MV-2017-05; Docket No. 2017-0002; Sequence No. 25]

Dear Ms. Mandell:

On behalf of the Retail Industry Leaders Association (RILA), I write in response to the request for information published in the Federal Register on December 15, 2017 (82 FR 59619). Retailers support the creation of a commercial e-commerce procurement program that ensures transparency, embraces competition, and protects fairness.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers which together account for more than 1.5 trillion dollars in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA members are both existing federal government contractors as well as companies looking for new customers, including the government and this procurement program. Our members monitored and participated in the public meeting held on January 9 and are encouraged by the transparency and commitment to thoughtful implementation of this program reflected in that meeting.

At a threshold level, we underscore the vital role of transparency in the development of the commercial e-commerce procurement portal program. Any new program creates a number of unanswered questions. Therefore, we recommend building time and stakeholder consultation meetings into your plan to help address these myriad questions.

For example, with respect to uses, limitations, and data ownership, GSA must consider how it will allocate and balance the data rights of the federal government, suppliers, and portal providers. This consideration includes identifying which party owns what data, how a portal provider's use of such data will be restricted, and how customer service and customer communications will be controlled. For instance, ownership of any data related to a given transaction traversing the portal should reside with the federal government and the supplier but not with the portal provider. As discussed more fully below, portal providers should be restricted to using such data solely to process and fulfill the immediate transaction. Any other use of such data by portal providers must be prohibited. Likewise, ensuring that portal providers are not able to unduly influence a supplier's prices or alter other transactional data and limiting a portal provider's ability to require information in excess of that requested by GSA is essential in successfully fostering competition amongst suppliers. GSA must also define what circumstances, if any, would result in the release of transactional data. Failure to address these critical issues and eliminate significant data risks will inhibit participation in the portal program.

Additionally, the reference to “core commercial item clauses” in paragraph C.1 of the request for information must be defined. As the General Services Administration (GSA) is aware, a large number of government procurement laws and regulations apply to commercial and COTS acquisitions.¹ There is no common understanding of what constitutes the “core” of those regulations, and as such, we hope to understand what provisions GSA and OMB have in mind. We note that the Department of Defense (DOD) is conducting a review of the justification for continued application of many of those rules, pursuant to Section 849 of the FY2018 National Defense Authorization Act. We encourage GSA and OMB to coordinate with the DOD review to avoid duplicative work and potentially inconsistent regulatory outcomes.

In addition to “core commercial item clauses,” there are several additional issues that require definition and further exploration, including privity of contract, data security requirements, administration of the portals (*e.g.*, customer communications, fees, monitoring compliance), and the potential uses, limitations and ownership of portal advertising and transactional data. The statute itself does not adequately address these key issues, and thus may prevent suppliers from participating in the portal program.

To ensure everyone understands the various roles and responsibilities of portal providers and participants, GSA must identify the party with whom the federal government will possess privity of contract for compliance and enforcement purposes. GSA should also clearly define the ground rules for administering the portals. For instance, GSA should require the identification and transparency of any fees associated with a transaction through the portal and must determine whether there are additional fee constructs that should be restricted. We strongly recommend prohibiting a “pay-to-play” fee structure. Additionally, we believe that GSA should clarify the specific elements that will be included in contract language with portal providers regarding how the portal provider is compensated and the expenses suppliers can anticipate as a condition of their participation in these portals. Contracts should also proscribe industry standard data security requirements to be implemented, monitored and maintained by portal providers. Lastly, GSA should delineate who will be responsible for monitoring compliance with applicable rules and limit a portal provider’s ability, if any, with respect to granting or restricting access of the portal to a potential supplier.

In addition to the aforementioned concerns, GSA, in examining various e-commerce portal solutions, should implement the program in a manner that minimizes unintended negative consequences for federal departments and agencies, the industrial base supplying the government, and the U.S. economy. For example, the e-commerce portal providers will serve as a gatekeeper to government sales, while at the same time gain access to a substantial amount of supplier-information, including competitively sensitive information. This presents a particular concern under antitrust laws, specifically the Sherman Act, 15 U.S.C. §§ 1-2, where the portal provider is also competing with third party portal suppliers to sell products to the federal government and other non-government customers. To the extent portal providers include providers who are also suppliers on the portals, it will be critical that the portal providers demonstrate adequate firewalls between their competitive businesses and the portal operations. This is necessary to ensure that there is no disclosure of competitively sensitive information, and that they operate in a transparent manner which does not favor the portal provider or their affiliated supply businesses over those of other suppliers. In the absence of these protections, the government customer could be disadvantaged and there could be anticompetitive effects that spillover into other sales channels.

¹ See, *e.g.*, FAR Case 2000-305, Commercially Available Off-the-Shelf (COTS) Items, 74 Fed. Reg. 2713 (Jan. 15, 2009) (describing swath of regulations that, after due consideration, *still* apply to COTS acquisitions).

RILA members also strongly support ensuring robust competition and fairness in the commercial e-commerce procurement portal program. Section 846(a) clearly states that the program should award “multiple contracts to multiple commercial e-commerce portal providers.” This language unequivocally places strong competition at the center of the creation of this program. As such, we believe GSA should take every step to support competition, including:

- Allowing for portals with overlap in product categories;
- Allowing all qualified sellers to access relevant portals;
- Requiring portal providers utilizing third-party sellers to have reasonable and transparent fees that are factored into the government selection criteria;
- Ensuring all e-commerce portal providers are subject to the same regulations and requirements; and
- Ensuring portal providers are prevented from utilizing supplier’s competitively sensitive information in a manner contemplated in various antitrust laws.

But, we highlight the risk that without some accommodation, nontraditional contractors will be reluctant to participate in the e-commerce procurement portal program given the legal and regulatory obligations associated with government contracts. Two pathways, which are not mutually exclusive, would go a long way to increasing participation and providing some certainty to potential entrants into the commercial e-commerce portal marketplace.

First, GSA and OMB have an opportunity to clearly define the scope of any associated compliance burdens. For instance, if a portal provider were deemed to have compliance obligations, GSA and OMB could clarify that the provider is required to comply with obligations under the Federal Acquisition Regulation or any other law, as may be applicable only with respect to the segment, business unit, or legal entity holding the contract, and not with respect to any affiliated entity of the provider.

Second, GSA and OMB could reexamine onerous regulations that may not be relevant to a particular government contract. For example, several regulations require the creation of specific programs within companies and the recordkeeping and audit requirements associated with proving compliance represent significant burdens and potential barriers to entry. These barriers prevent the government from attracting a large number of marketplace providers losing the efficiency gains that come from robust competition. Providing clarity would enable prospective portal providers to accurately assess costs and risks, thereby attracting entrants who might otherwise be unwilling to participate because of uncertainty.

RILA members stand ready to assist GSA and OMB in developing the most transparent, competitive, and fair program possible while providing the federal government with new efficiencies and savings through commercial e-commerce portals. If you have any questions, please contact Nicholas Ahrens at nicholas.ahrens@rila.org or 703-600-2065.

Sincerely,



Jennifer M. Safavian
Executive Vice President, Government Affairs

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Organization: U.S. AbilityOne Commission

Government Agency Type: Federal

Government Agency: CPPBSD

General Comment

See attached file(s)

Attachments

CPPBSD Input - Procurement Through Commercial e-Commerce Portals 20180116



U.S. ABILITYONE COMMISSION

January 16, 2018

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MEMO FOR GENERAL SERVICES ADMINISTRATION

SUBJECT: Procurement Through Commercial e-Commerce Portals

The Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) (Commission) offers the following comments regarding Procurement Through Commercial e-Commerce Portals.

The mission of the Commission is to provide employment opportunities for people who are blind or have significant disabilities in the manufacture and delivery of products and services to the Federal Government. The AbilityOne Program is a source of employment for more than 46,000 people who are blind or have significant disabilities, including approximately 3,000 veterans, at approximately 550 nonprofit agencies from Maine to Guam. AbilityOne provided more than \$3.3 billion of products and services to the federal government in fiscal year 2016. The program operates at more than 1,000 locations representing 40 government agencies, including 150 Base Supply Centers at military and government installations.

As GSA implements the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Section 846, Procurement Through Commercial e-Commerce Portals, the Commission supports and advocates for GSA to engage and ensure AbilityOne and other socio-economic programs dedicated to people who are blind or have significant disabilities, as well as to veterans who are wounded, ill or injured.

No matter how GSA ultimately decides to build the e-commerce portal pursuant to Section 846(f)(1), all laws pertaining to procurement and property or services by the government must apply to this e-commerce portal program. The U.S. AbilityOne Commission asserts that all portals must include mandatory government sources as priorities over other sales.

The Commission will work proactively with GSA. Accordingly, the Commission offers the following specific comments regarding the three focus areas -- General Program Design, Business Practices, and Implementation.

A. General Program Design

1. *Leveraging existing e-commerce portal providers.* What factors would encourage portal providers to contract with GSA to operate e-commerce portals for Government use? What are the standard terms and conditions relating to purchasing through the portal? Which of these standard terms and conditions would need to change for Federal Government buying? What relief from applicable laws, Executive Orders, regulations, and policies is necessary for portal providers to want to enter this marketplace?

U.S. AbilityOne Commission: Factors that would encourage portal providers include volume of federal sales, projected growth of commercial sales, marketing and advertising, and overall revenue. Opportunities to leverage government volume into other business areas such as distribution, from storage to shipment and delivery, would also influence portal providers. As a minimum, standard terms and conditions should include government access to data on federal purchasing practices, trends, pricing and other factors that will enable better buying decisions and power. Necessary changes would include certain purchasing thresholds and authorities, as well as changes in government requirements, reporting and method of purchase, refunds, etc.

For portal providers to enter this marketplace, they must agree to be bound by all laws pertaining to procurement of property or services by the government pursuant to Section 846(f)(1). Any relief from applicable laws, Executive Orders or similar directives must have a minimum and maximum threshold of analysis before such relief would be proposed or granted.

For example, minimum requirements for relief could include a “do no harm” standard where portal providers demonstrate in their proposals how they can participate with minimum or no change where “harm” would be caused if there was relief from law, regulations, etc. A maximum threshold of analysis would consider tradeoffs that mitigate portal providers’ and government risks associated with applicable laws, Executive Orders, regulations, etc. The Commission suggests that no relief be provided from applicable laws, Executive Orders, regulations, or policies without a comprehensive analysis and plan (e.g., grandfather some elements, establish an off/on ramp for others, etc.).

These guiding principles have created a robust federal procurement system to ensure appropriate competition, selection, and management of products by the federal government. Most importantly, in regard to standard terms and conditions, AbilityOne producing nonprofit agencies have themselves attempted to list their products on commercial e-commerce sites, only to exit the site due to onerous Terms & Conditions (T&C). Smaller non-profits, and especially small AbilityOne Distributors, are vulnerable to strict T&Cs that can run into tens of thousands of dollars in penalties.



2. *Number of portals.* What factors should GSA take into consideration when determining the appropriate number of contracts to award to portal providers to achieve the objectives of the law (*i.e.*, enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products)? For example, would it be appropriate for GSA to seek to limit overlap of product categories and/or make award to a single portal provider for a product category? In some industries, such as travel, aggregators and metasearch engines permit easy comparison shopping. Does such a model fit into a commercial-off-the-shelf (COTS) product marketplace?

U.S. AbilityOne Commission: Care should be taken in the selection of multiple portals. While competition is the bedrock of a free enterprise economy, multiple portals might lead to suppliers believing that they need to post their products on all portals available. This will undoubtedly lead to high cost of entry into the various portals. Each portal will have its own unique set of requirements for suppliers to meet, including images, content, etc. Images alone might lead to thousands of dollars for a single product to be produced for different portals. Multiplied by hundreds of products, times multiple portals, and suddenly the cost of entry may prove prohibitive.

If multiple portals are chosen, GSA may find itself having to produce a search engine that allows for price comparisons among multiple portals, much like a consumer might use to choose between buying from Amazon or the local Home Depot.

3. *Phase-in.* Section 846 envisions that the program would be available to acquisitions under the simplified acquisition threshold (SAT), which pursuant to NDAA Section 806, will be \$250,000. Notwithstanding this limitation, should GSA take an incremental approach to the roll-out of the program? If so, should the phase-in be based on dollar value (*e.g.*, focus initially on a threshold below the SAT), certain product categories (*e.g.*, lab equipment, office supplies, clothing), and/or some other variable? Explain.

U.S. AbilityOne Commission: The Commission agrees with a phased roll-out, and is likely to find interested participants from among the AbilityOne Program's participating nonprofit agencies and/or distributors. In its current project with Amazon, the Commission has experienced challenges due to the number and complexity of issues associated with exploring opportunities to expand the selection of AbilityOne products online. For that reason, as a starting point with Amazon, the Commission is considering initially limiting both the number of products available and the number of Authorized AbilityOne Distributors.



4. *Relationship between GSA, Government buyers, e-commerce portal providers, and sellers through portal providers.* What is the commercial practice for the privity of contract relationship between e-commerce portal providers, sellers through portal providers, and buyers? Who should have privity of contract under the program? Should the portal provider have privity of contract with the sellers? Should the Government buyer have privity of contract with the seller through the portal provider?

5. *Supplier and product performance.* What are the commercial practices for reviewing supplier and product performance on commercial e-commerce portals? How should the Government use supplier and product reviews for this program? Should Government reviews be public? Should the Government rely on commercial reviews integrated in the existing e-commerce platform when making purchases through the program? What role should existing Government past performance data play in the program?

U.S. AbilityOne Commission: The Commission designates the nonprofit agency(ies) that will produce a product. In most cases, commodity type products that fall under the Simplified Acquisition Threshold (SAT) are produced by only one nonprofit agency. Government agencies remain under mandatory source guidelines to procure from that nonprofit. The Commission believes that comments available to all parties including GSA, e-commerce portal providers, buyers and sellers are likely to improve the overall performance of producing nonprofit agencies. Buyer reviews are valuable and play a key role in how other buyers select products and sellers.

B. Buying Practices

1. *Competition.* How do commercial firms consider competition when conducting purchases through commercial e-commerce portals, compared to the Federal Government's approach to competition in its acquisition system? Should all purchases between the micro-purchase threshold and the SAT be treated in identical fashion in terms of competition? How, if at all, should the competition rules be modified from what is currently required by the Federal Acquisition Regulation (FAR) for COTS purchases?

U.S. AbilityOne Commission: Section 846 indicated that all procurement policy and regulation must include the mandatory government source priorities without exception when structuring the Request For Proposal and contract.

2. *Pricing, delivery and other terms of sale.* How do commercial firms establish pricing, delivery, and other terms of sales when buying COTS products through commercial e-commerce portals? Should the Government's commercial e-commerce portal program allow GSA and/or Government buyers to negotiate discounts from stated prices and other concessions (e.g., volume discounts, faster delivery, longer warranties), as is done under the Federal Supply Schedules



contracts? Alternatively, should Government buyers be restricted to a “take it or leave it” approach that limits customers to the prices sellers offer commercial customers based on the competitive pressures of the platform? How does the relationship between the e-commerce portal provider and supplier drive the approach?

U.S. AbilityOne Commission: In regard to AbilityOne products, the Commission sets the price (for commodity products, a wholesale price) in accordance with regulation. Once the product enters the AbilityOne Distribution system, Authorized Distributors are then capped at the percentage of mark-up they are allowed (55% - circumstances pending). Government customers can negotiate with Distributors. However, Distributors are not permitted to negotiate below the Commission-set wholesale price.

It should be noted that certain e-commerce firms are well known for their data capabilities. With those capabilities, firms may “pick off” and private label certain products that sell well, thus shutting out the original manufacturer or distributors. This threat is real and would devastate the AbilityOne Program, should GSA allow this to occur in its commercial e-commerce program.

3. *Compliance.* What is the commercial practice of e-commerce portal providers for monitoring compliance with applicable laws/regulations and supply chain risk management of sellers through the portal? To the extent that purchases made through the portal are subject to certain Government-unique requirements, who should be responsible for ensuring compliance (*e.g.*, the platform provider, the seller, the government buyer, other)?

U.S. AbilityOne Commission: Commercial e-commerce platform firms argued eloquently at GSA’s Town Hall meeting on January 9, 2018 that compliance is the government’s issue, and that commercial e-commerce platform firms should not be party to compliance assistance. The firms stated that they are simply the platform for buyers and sellers. Conversely, equally eloquent speakers representing people with disabilities argued against this hands-off approach, insisting that portal providers do have responsibility to assist in ensuring procurement compliance.

The Commission position is that when commercial firms do business with the federal government, different rules apply and those e-commerce platform firms must comply with those rules pursuant to Section 846(f)(1).

The federal government has a unique procurement system, as discussed earlier. The introduction of commercial e-commerce platforms should not change the requirements for federal purchasing in any way. Throughout the history of the federal procurement system, millions of firms have played by the government’s rules. There is no reason why that should not continue today with the use of commercial e-commerce portals. Those firms are more than capable of building the algorithms and processes to assist government buyers and sellers with procurement compliance. While these platforms have “changed the world” to some degree, they should not change or



control inherently governmental processes necessary for fair competition and socioeconomic plans intended to equalize the marketplace for disadvantaged businesses.

4. Considerations for small businesses, socio-economic programs, and mandatory sources.

What, if any, adjustments should be made to existing requirements associated with small businesses, socio-economic programs, and mandatory sources?

U.S. AbilityOne Commission: First, small business, socio-economic programs, and mandatory sources should enjoy the same status they do today pursuant to Section 846(f)(1). GSA must require e-commerce platform firms to address all of these issues when building their portals. Second, these businesses and programs should also enjoy a preference when buyers are searching for products, by the use of icons or other messaging to let buyers know what the status of these firms are. Third, data gathering is capable of generating reports for agency small business offices to compile statistics for reporting purposes. Fourth, data gathering can also assist Congress itself in report generation for sales by districts, or firms, or other important data for OMB, GAO, or the CBO. E-commerce platform firms are not excepted from these mandates and programs.

5. Supplier and product performance. What are the commercial practices for reviewing supplier and product performance on commercial e-commerce portals? How should the Government use supplier and product reviews for this program? Should Government reviews be public? Should the Government rely on commercial reviews integrated in the existing e-commerce platform when making purchases through the program? What role should existing Government past performance data play in the program?

U.S. AbilityOne Commission: All sellers should be required to provide their SAM registration that they are eligible for award. The commercial procurement of a piece of hardware used for industrial purposes is no different, perhaps, than the same piece of hardware being used for the exact same purpose for the government. A nut and bolt is a nut and bolt. Commercial reviews are equally applicable to government use, and vice versa. In addition, it is entirely possible that through the sharing of comments, solutions to problems can be discovered, opportunities developed, etc. Communication should be shared and expanded, not corralled and limited.

6. Responsibility of platform sellers. What are the commercial practices of e-commerce portal providers vetting the sellers on their platform? What, if any, responsibility determination should be made for companies selling through the portals, who should make the responsibility determination, and when should such a determination be made?

U.S. AbilityOne Commission: The Commission has ultimate responsibility for producing nonprofit agencies and Distributors in the AbilityOne Program. The commercial e-commerce



platform providers should not have any ability to approve, deny, or remove any seller of AbilityOne products without notifying the Commission. However, the platform provider should have responsibility for reporting any unusual or problematic issues to the Commission and GSA.

C. Implementation

1. *Changes to existing acquisition framework for COTS items.* If the program were only to apply core commercial item clauses in contracts with e-commerce portal providers and suppliers who sell through the portal, could the program operate successfully in part or in full? If not, what additional changes are needed to statutes, Executive Orders, regulations, policies, and other guidance and tools, to make the program successful? Where possible, please tie recommendations for relief to suggestions made in response to other questions to help illustrate the potential benefits of action and the potential consequences of inaction.

U.S. AbilityOne Commission: The Commission doubts this will work unless all portal providers agree to the same set of core commercial item clauses. As multiple portals are contemplated, small business and small AbilityOne nonprofit agencies will likely not have the bandwidth or resources to stay on top of multiple commercial item clauses. For example, it may be difficult or impossible for such small enterprises to keep track of instances where, for example, one portal provider penalizes for a five (5) day late delivery but another penalizes for a three (3) late delivery. In addition, different clauses will result in different prices for the same product, thus potentially forcing the portal providers themselves to “race to the bottom.” The same might be true of buyers attempting to compare products. Ultimately, buyers will end up favoring one portal or a few, leaving other portals with no option but to request to end their contract, or not re-bid.

2. *Level of relief.* Should the list of applicable laws, Executive Orders, regulations, and policies applicable to program purchases be identical for all COTS transactions over the micro-purchase threshold and up to the SAT?

U.S. AbilityOne Commission: The Commission would not contemplate any changes to applicable laws, Executive Orders, regulations or policies that apply to the AbilityOne Program.

3. *Rulemaking.* Should the regulations for this program be in the FAR, in separate GSA regulations, or both? Why?

U.S. AbilityOne Commission: Regulations for this program should be in the FAR because that is where the contracting officers begin and end their due diligence.



D. Additional Considerations

What other issues are especially important in thinking about Phase I and the initial implementation plan?

U.S. AbilityOne Commission: The Commission urges GSA to proceed with caution. Using commercial e-commerce portals is not a simple matter of adding products to a website and “flipping the switch.” Complex business and government issues are at play, and must be very carefully considered.

