



**GENERAL SERVICES ADMINISTRATION**

[Notice-MV-2017-05; Docket No. 2017-0002; Sequence No. 25]

**Procurement through Commercial e-Commerce Portals**

**AGENCY:** Office of Acquisition Policy, General Services Administration.

**ACTION:** Notice of a public meeting and request for information.

**SUMMARY:** The General Services Administration (GSA) and the Office of Management and Budget (OMB) are interested in conducting an ongoing dialogue with industry about Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals. The dialogue begins with this public notice and request for comment.

GSA is providing external stakeholders the opportunity to offer input on the first implementation phase outlined in Section 846, an implementation plan due to Congress within 90 days of enactment.

GSA and OMB are hosting a modified town-hall style public meeting to help inform the Phase I submittal.

**DATES:** The public meeting will be conducted on January 9, 2018, at 8:30 a.m. Eastern Standard Time. Further Information for the public meeting may be found under the

heading "Supplementary Information".

**ADDRESSES:** The meeting will be held at GSA's Central Office, at 1800 F St NW, Washington, DC 20405.

Submit comments identified by "Procurement Through Commercial e-Commerce Portals", by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments by searching for "Procurement Through Commercial e-Commerce Portals". Select the link "Comment Now" and follow the instructions provided at the "You are commenting on" screen. Please include your name, company name (if any), and "Procurement Through Commercial e-Commerce Portals", on your attached document.

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

Instructions: Please submit comments only and cite "Procurement Through Commercial e-Commerce Portals" in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov), or 202-690-9232, for clarification of content, public meeting information and submission of comment. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite "Procurement Through Commercial e-Commerce Portals".

**Written Comments/Statements:** Interested parties may submit written comments to [www.regulations.gov](http://www.regulations.gov) by **January 16, 2018**.

GSA and OMB encourage early engagement so that public input may be considered in the formulation of the Phase I implementation plan, which is due to Congress within 90 days of enactment of the NDAA for Fiscal Year 2018.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The General Services Administration (GSA) was established to provide the United States Government with centralized procurement. For decades, GSA has provided access to commercial products through a number of channels including GSA Advantage!, GSA eBuy, GSA Global Supply, and the Federal Supply Schedules. Across the Government, the market for commercial products is estimated to be greater than \$50 billion annually.

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.

The National Defense Authorization Act (NDAA) for Fiscal Year 2018, Section 846 Procurement Through Commercial e-Commerce Portals, directs the Administrator of the GSA to establish a program to procure commercial products through commercial e-commerce portals. Section 846 language can be found at the following link - <https://interact.gsa.gov/group/commercial-platform-initiative>. Section 846 paragraph (c) instructs the "Director of the Office of Management and Budget, in consultation with the GSA Administrator and the heads of other relevant departments and agencies," to carry out three implementation phases. Phase I requires:

Not later than 90 days after the date of the enactment of this Act, an implementation plan and schedule for carrying out the program established pursuant to subsection (a), including a discussion and 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 of this section.

GSA and OMB intend to establish an ongoing dialogue with industry and interested parties in Government throughout the program's implementation. As a first step, GSA and OMB are seeking feedback from outside stakeholders on initial ideas for general program design and buying practices and, in that context, whether existing laws, Executive Orders, policies or other requirements may hinder effective implementation of the program.

## **II. Written Comments**

To assist GSA and OMB in drafting the Phase I implementation plan, GSA and OMB are inviting interested parties to submit written comments. GSA and OMB are encouraging those comments be submitted before the public meeting on January 9, 2018, which will help GSA and OMB prepare informed questions for the public meeting discussions. However, all comments must be submitted by **January 16, 2018**, which will allow the Government to take them into account before drafting the Phase I implementation plan.

To facilitate comment submission, GSA and OMB have developed a number of questions grouped around three focus areas— program design, business practices, and implementation. Each question is intended to provide respondents with a general framework for commenting. These questions are not intended to be all-inclusive; other comments and observations are encouraged. GSA and OMB understand the tight timeframe for initial comment may limit commenters' ability to fully address every issue and are therefore encouraging commenters to continue their analysis and provide additional input at future outreach sessions.

#### **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?

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?

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.

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. Relationship to existing programs. How should GSA consider the relationship between this program and other GSA managed Government-wide acquisition programs that provide ready access to COTS items, such as the Federal Supply Schedules and the national supply system? What unintended consequences, if any, do you envision, and what steps, if any, do you recommend to avoid them?

## **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?

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?

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)?

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?

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?

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?

### **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.

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?

3. Rulemaking. Should the regulations for this program be in the FAR, in separate GSA regulations, or both? Why?

#### **D. Additional Considerations**

What other issues are especially important in thinking about Phase I and the initial implementation plan?

##### **Iii. Public Meeting**

GSA and OMB are holding a modified town-hall style public meeting on January 9, 2018. The meeting will start at 8:30 a.m. Eastern Standard Time and conclude no later than 4:00 p.m. Eastern Standard Time. Attendees can attend the meeting in person at GSA Central Office or virtually through GSA's Internet meeting platform, Adobe Connect. Further details on the virtual meeting will be made available via GSA Interact at <https://interact.gsa.gov/group/commercial-platform->

initiative. (GSA may encourage industry-to-industry dialogue through this interact site.)

GSA and OMB will not make presentations and will not answer questions during this meeting. Instead, GSA and OMB will actively listen to the viewpoints and information presented by different interested parties. GSA and OMB may pose questions to participants to clarify feedback, to generate dialogue, or to increase understanding.

This meeting will focus on Phase I. Future sessions are envisioned to gather information for subsequent implementation phases.

**In-person Attendance:** Interested parties may attend the public meeting to be held in the GSA Auditorium at GSA Headquarters, located at 1800 F St NW, Washington, DC 20405. The public is asked to pre-register by January 2, 2018, due to security and seating limitations. To pre-register, email the names of attendees (required) and the name of their organization (not required) to Mr. Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov).

Registration check-in will begin at 7:30 a.m. Eastern Standard Time January 9, 2018, and the meeting will start promptly at 8:30 a.m. Eastern Standard Time, January 9, 2018. Attendees must be prepared to present a form of government-issued photo identification.

**Oral Presentations:** GSA and OMB intend to conduct a modified town-hall / panel style discussion focused around each of the three main topics outlined above (i.e., program design, buying practices, and implementation). GSA will assign parties interested in presenting (at the public meeting) into panels.

GSA intends to organize panel discussions around each of the three topic areas (General Program Design, Buying Practices, and Implementation). Each panel discussion will include up to five panelists and is expected to run between one to two hours. Parties wishing to participate as a panel member should email Mr. Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov) by December 28, 2017, noting which of the three topics they wish to address.

GSA will select the panelists from amongst those expressing an interest and will formally notify them of which panel and estimated starting time. In selecting panelists, GSA will seek an array of perspectives, backgrounds, and views.

As part of the facilitated dialogue, GSA and OMB employees will ask the panelists questions. Time permitting, other attendees may also be invited to ask questions. Time will be reserved before the conclusion of the meeting for attendees to comment on issues not already

addressed.

Note: Requests made after the deadline to participate on a panel may be accepted if space permits.

**Virtual Attendance:** Interested parties may also attend virtually through GSA's virtual meeting platform, hosted by Adobe Connect. Further details on the virtual meeting will be made available via GSA Interact at <https://interact.gsa.gov/group/commercial-platform-initiative>.

**Meeting Accommodations:** The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Mr. Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov) or 202-690-9232 by December 28, 2017.

The TTY number for further information is: 1-800-877-8339. When the operator answers the call, let them know the agency is the General Services Administration; the point-of-contact is Mr. Matthew McFarland at 202-690-9232.

Dated: December 11, 2017.

**Jeffrey A. Koses,**

*Senior Procurement Executive,*

*Office of Acquisition Policy,*

*Office of Government-wide Policy,  
General Services Administration.*

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