



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 30, 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Section 846 of the Fiscal Year (FY) 2018 National Defense Authorization Act (NDAA) directs the Office of Management and Budget (OMB) to develop a multi-phased implementation plan for a program to be established and managed by the General Services Administration (GSA) to procure commercial products through commercial e-commerce portals. In accordance with section 846(c)(1), OMB is submitting the enclosed report on the second phase of the implementation plan, which has been developed by GSA in close consultation with OMB and with input from agency and private sector stakeholders.

The President's Management Agenda is driving integrated, bold change to bring the Government's practices and mission delivery capabilities into the 21st century through information technology (IT) modernization, better uses of data and stronger accountability, and development of a modern workforce. Achieving these goals requires a high-functioning, nimble, and responsive acquisition system that sheds its compliance-based focus and embraces a mission-first orientation where leading edge technologies and expert information networks help the acquisition workforce move from low value to high value activities. Smart use of commercial e-commerce portals is one of many enablers of this larger transformation.

In the Spring of 2018, GSA and OMB presented their initial high-level vision for a program to encourage agency use of commercial e-commerce portals -- a vision centered around achieving a contemporary buying experience for smart comparison shopping for commercial products that is on par with familiar consumer experience in terms of ease, speed, and access to the market. Over the past year, GSA consulted with hundreds of stakeholders to gain a better understanding of the commercial landscape and how the capabilities can be best leveraged to the benefit of Government. Additionally, GSA learned about the emerging potential of these offerings in the business-to-business space. Stakeholders identified both opportunities and challenges surrounding the use of commercial portals by federal buyers.

The opportunities that stakeholders identified include the ability for new entrants and other sellers to make their products visible to federal buyers with greater ease and less investment. For agency personnel, opportunities include using robust data from the platform to make more informed decisions, and training end users to make simple purchases of commercial

products for themselves, freeing contracting officers to focus their resources on more complex acquisitions. Identified challenges include (i) the growing complexity of supply chain risk, (ii) the potential unfair competitive advantage some participants may have if they are able to gain comprehensive insight into government buying purchases ahead of the marketplace at large, and (iii) the complexity of determining how to assign responsibility amongst the various parties to a portal transaction for managing compliance with dozens of government-unique requirements, most of which are statutorily based.

After carefully considering stakeholder input, GSA and OMB have concluded that the best path forward is to begin operational implementation of Section 846 with an initial proof-of-concept to test use of commercial e-commerce portals and balance the commercial terms with the government acquisition rules. At this time, GSA and OMB will limit purchases to transactions below the micro-purchase threshold (MPT). The MPT is the fastest, most economical and efficient, and best-aligned way for government buyers to accept commercial terms and conditions, as envisioned in the conference report to Section 846, and poses significant potential for administrative savings. At the same time, limiting action to the MPT will help contain the government's exposure to downside risk because the level of activities that occur under the MPT involve the smallest amount of taxpayer investment. OMB and GSA believe that a modest increase in the MPT for purchases through the Section 846 program will augment the benefits of the program for the government.

Last year, as part of the initial phase of the implementation plan, GSA and OMB submitted a legislative proposal to increase the MPT to \$25,000 for purchases made through GSA-approved commercial portals. The sectional analysis explained that this increase could substantially enhance the value of the program - to include providing both government buyers and portal providers a stronger incentive to participate in the program. A number of stakeholders questioned how GSA and OMB arrived at the \$25,000 threshold and some even suggested that allowing buyers to decide which sources are considered in acquisitions up to this amount might expose taxpayers to an unprecedented level of risk.

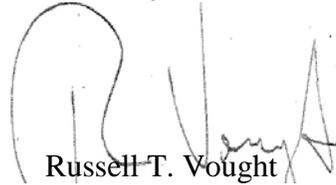
For more than two decades, contracting officers have been authorized to make purchases on the open market up to \$25,000 after considering three sources of their choosing. The same discretion has been vested in ordering officials making purchases on the Federal Supply Schedules. Extension of the same discretion to trained users of approved portals is a natural step in the evolution of the procurement process into the twenty-first century. The increase would allow the government to leverage the enhanced technology and data analytics made possible by commercial online platforms to bring the dynamic marketplace to its buyers. As explained in the implementation plan, risk would be managed through the issuance of ordering procedures addressing how sources and their product information are evaluated.

For these reasons, GSA and OMB are renewing their request that Congress increase the MPT threshold for this program to \$25,000, but have reshaped the proposal to be a five-year pilot. This important refinement is intended to recognize the need for Congress and other stakeholders to consider the effect of the increase before a decision is made on the permanent level of the MPT for this program. A copy of the proposal is enclosed.

To maximize the benefits of the initial proof-of-concept, GSA will work with agencies to determine how best to provide insight on commercial products being introduced to the supply chain. This added insight will allow agencies to make more strategic decisions about what open market buying activities might be moved to on-contract spending, and where it makes sense to continue making spot purchasing on the open market. GSA will also monitor and evaluate the effect of required data protections on participation in the commercial e-commerce portal program. As directed by Section 527 of the H.J.Res.31 - Consolidated Appropriations Act, 2019, GSA will provide a report thirty days after program implementation outlining the approach for the safeguarding of agency data and privacy protections.

GSA and OMB look forward to continuing their dialogue with Congress, agency stakeholders and industry partners on the enclosed implementation plan to modernize acquisition processes through the use of e-commerce portals and urge the Congress to give favorable consideration to the proposed legislative pilot for inclusion in this year's NDAA.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell T. Vought". The signature is stylized and somewhat cursive.

Russell T. Vought
Acting Director

Enclosures

Identical Letter Sent to:

The Honorable Ron Johnson
The Honorable Gary C. Peters
The Honorable Elijah E. Cummings
The Honorable Jim Jordan
The Honorable James Inhofe
The Honorable Jack Reed
The Honorable Adam Smith
The Honorable Mac Thornberry



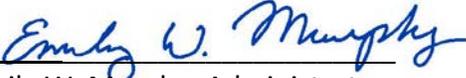
Procurement Through Commercial E-Commerce Portals

Phase II Report: Market Research & Consultation

March 2019

Signature Page

GSA is pleased to submit the Phase 2 implementation plan, which outlines and explains the implementation approach, program decisions, and research findings from the last year of market research and consultation. This plan was developed in close consultation with the Office of Management and Budget, as outlined in Section 846 of the FY18 National Defense Authorization Act (NDAA). We look forward to continuing to work with Congress, agency stakeholders, and industry partners in support of this important initiative.



Emily W. Murphy, Administrator
General Services Administration

April 24, 2019

Date

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1. Executive Summary

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018, Section 846, Procurement Through Commercial E-Commerce Portals, directs the General Services Administration (GSA) in partnership with the Office of Management and Budget (OMB) to establish a program to enable Federal agencies to procure commercial off-the-shelf (COTS) items through commercial e-commerce portals.¹ Section 846 seeks to align Government purchasing to commercial practices and technology through a phased implementation approach.

As required by Section 846, this report addresses Phase II of the implementation plan: Market Research and Consultation. The report outlines and explains GSA's implementation approach and program decisions and subsequently provides the supporting research that guided these decisions as directed by the legislation.

Section 846 directs GSA to accomplish the following tasks:

- A) Market analysis and initial communications with potential commercial e-commerce portal providers;
- B) Consultation with affected departments and agencies;
- C) An assessment of products or product categories suitable for purchase on the commercial e-commerce portals;
- D) An assessment of precautions necessary to safeguard information and protect against cybersecurity threats;
- E) A review of commercial terms and conditions in the context of Government requirements; and
- F) An assessment of the impact on existing programs.

GSA consulted with hundreds of stakeholders across Government and industry who identified opportunities and challenges surrounding the implementation of Section 846. The breadth of Section 846's instructions for this Phase II report underscores the inherent complexity of aligning commercial practices with existing statutory requirements for the purchase of COTS items across a still emerging industry space. **In fact, GSA heard multiple contrasting perspectives across stakeholder groups over the past year, with stakeholders emphasizing differing and oftentimes competing viewpoints.**

This Phase II report presents GSA's key decisions based on a consideration of these many viewpoints:

- GSA will begin operational implementation of the program with an initial proof of concept so that it can evaluate results and impacts with actual purchases and spending data before making more significant investments and before issuing any regulations.
- GSA will limit purchases made through the initial proof of concept to the micro-purchase threshold (MPT) to drive adoption, increase insights, and mitigate risk.
- GSA will start with the e-marketplace model (one of the three models identified in the Phase I report) for this initial proof of concept while continuing to assess opportunities to leverage the benefits of the other commercial e-commerce portal models.

¹ Public Law 115-91, 131 Stat. 1283 at 1483-1487, 41 U.S.C. 1901 note.

To maximize the effectiveness of the proof of concept, GSA recommends the following legislative change:

- As addressed in the Phase I Report, **raising the micro-purchase threshold (MPT) from \$10,000 to \$25,000 for a limited period of five years, for purchases made by all Federal agencies through GSA-approved commercial e-commerce portals.** This recommendation will demonstrate the Government’s willingness to adapt the way it does business to remove barriers to entry, and increase the likelihood the Government will successfully adopt modern buying models.

Objectives: Maintain a consistent, unified procurement process that offers a strong incentive for agencies and commercial e-commerce portal providers to participate in a Government-wide transformative solution and minimizes complexity over a broader range of procurement activities, enabling savings and improved efficiencies in the nearer term by shifting routine work from the acquisition workforce to the program offices and allowing contracting officers more bandwidth to focus on more complicated mission-focused procurements.

Finally, the report concludes with the research findings per the specific requirements of Section 846. GSA and OMB look forward to continuing to work with Congress, agency partners, the supplier community, commercial e-commerce portal providers, and other interested stakeholders in testing this initial proof of concept and drawing lessons from its results for broader program implementation.

2. GSA Program Decisions

Per the Phase I report,² and under the guidance of Congress, GSA is pursuing a phased implementation approach beginning with an initial proof of concept that will inform broader program implementation. Based on the market research conducted during Phase II, GSA will use this initial proof of concept to test an e-marketplace model for purchases up to the MPT. The following section of the Phase II report explains the rationale behind this approach.

2.1 Proof of Concept Approach

GSA heard a variety of different and oftentimes competing viewpoints across stakeholders on the key issues Congress asked GSA to research. GSA’s findings further validated interest from agencies in bringing greater visibility to open market spending and using commercial e-commerce platforms as a way to manage it. It is important to note some agencies are already taking steps to explore e-commerce partnerships on their own to improve the buying experience and gain visibility into buying behavior.

2.1.1 Testing the Impacts of Commercial Practices in Government

GSA is taking an iterative implementation approach driven by an initial proof of concept with multiple providers. GSA will start small, test, and refine as lessons are learned. This will allow GSA to understand how the model plays out in reality rather than in theory. GSA will collect actual spend data and assess the merits of various program decisions, for a relatively minor investment of resources while largely aligning with commercial practices.

² For full plan, see: <https://interact.gsa.gov/sites/default/files/Commercial%20Platform%20Implementation%20Plan.pdf>.

With some agencies already moving out in this direction, GSA needs to begin the proof of concept quickly to develop a consolidated view of spend data and to enable a data-driven, whole-of-Government approach to work with commercial e-commerce platforms. Creation of solutions by individual agencies could limit the ability for Government to leverage the power of this unified spending data and manage the marketplace in a consistent manner.

GSA will use the initial proof of concept to assess the following questions and has identified initial measures to consider as part of Phase III:

- 1) To what extent is the program successfully **modernizing the COTS buying experience?**

Potential measures may include: Time to onboard new suppliers or third-party vendors, time from initial order placement to receipt, average shipping duration, savings vs. consumer price, increase in spend through the platforms, customer satisfaction.

- 2) To what extent is the program attracting buyers and thus **shifting work away from contracting officers** to allow them to focus on higher value and more complex work, and what changes would need to be addressed for a broader expansion?

Potential measures may include: Adoption rate by Government Purchase Card (GPC) cardholders, increased spend via purchase cards, time savings by contracting officers (if MPT raised to \$25K).

- 3) To what extent can the program's increased transparency, both in terms of spending data visibility and access to mandatory source and socioeconomic programs, **drive better buying strategies and decisions?**

Potential measures may include: Agency managers using data analytics to develop buying strategies for purchase card holders, price competitiveness, socioeconomic spend measurement, impact to small businesses, average number of suppliers per item (competitive factor).

GSA will work as part of Phase III: Implementation Guidance to define clear stage gates based on the collected data to evaluate how well the initial proof of concept is performing. This evaluation will also enable GSA to identify changes or investments that might be required for larger program expansion.

2.1.2 Testing the Impacts of Data Protection on Program Participation

Through its market research and consultation, GSA heard sharply different messages on the potential impact of paragraph (h)(3) of Section 846, as amended by Section 838 of the FY19 NDAA.³ Commercial e-commerce portal providers, and specifically those offering the e-marketplace model, suggest the data protections may make it difficult to provide appropriate supplier screening, customer service, and warranty work while the supplier community has voiced fears that e-marketplace model portal providers could use data regarding Government purchases through the program to establish an unfair competitive advantage.

GSA intends to use the proof of concept to monitor the impacts of the data protection clarifications in Section 838 to better understand and assess these concerns across e-marketplace model portal

³ John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115-232 (August 13, 2018).

providers and the supplier community and to evaluate whether further statutory clarifications are needed.

Two data-use examples help to better underscore the concerns from both suppliers and e-marketplace model portal providers about this existing language:

Product white labelling: Suppliers voiced concern it would not be possible for GSA to discern (and subsequently hold e-marketplace model portal providers accountable) if an e-marketplace model portal provider had accessed and used supplier sales data to decide to enter the market with their own “white-label” version of a supplier’s product, but at a lower price point. Government has limited ability to proactively monitor and identify this behavior, as mere access to the data alone would not prove the e-marketplace model portal provider’s intent or action based on that data. Suppliers argue the data protection language in Section 838 does not go far enough to protect against this concern.

Meeting surge customer demand: E-marketplace model portal providers expressed concern that without access to data they could not operate their marketplaces effectively or in the best interest of the Government. An example would be during times of customer buying surges, such as natural disasters. If there was a spike in the sales of a certain product, and the existing supplier base was struggling to meet the demand, the e-marketplace model portal providers could use the data to quickly identify and invite additional suppliers to the marketplace, thereby meeting the needs of Government buyers. However, e-marketplace model portal providers suggested that the language as written offers uncertainty as to whether they could leverage the data for this use case, and have shared with GSA they may elect to not participate in the program due to the uncertainty caused by the language. On the other hand, if this use case were allowed, suppliers took issue over the provider’s use of their spending or inventory data as a means to reduce the supplier’s competitive advantage.

Data ownership and access is not a challenge unique to this program; it has become an increasingly larger concern amongst suppliers and customers on commercial marketplaces. It is a heavily contentious topic prevalent in today’s commercial e-commerce portal environment as evidenced by recent lawsuits and the introduction of new privacy regulations abroad. These data protection decisions and frameworks will continue to impact and shift existing commercial offerings. Starting with a small-dollar initial proof of concept will decrease the impact of any unintended consequences and enable GSA both to make course corrections and adapt to commercial practices as they evolve in the marketplace at large.

2.2 Initial Alignment of Commercial Practice and Government Regulations

For several reasons addressed above, GSA concluded that it would launch the initial proof of concept at the micro-purchase level. The MPT provides a less complicated and more commercial-like way to begin gaining experience with e-commerce commercial platforms. Equally important, more analysis is required to determine how responsibilities are appropriately assigned for the various business and compliance requirements that are statutorily required above the MPT and up to the simplified acquisition threshold (SAT). Commercial e-commerce portal providers confirmed in their responses to a request for information (RFI) issued last summer that most of the statutory compliance requirements are not

consistent with commercial practice.⁴ This means significant legislative changes might be required to ensure vendor participation as the program is expanded to the SAT.⁵ Even at the MPT, both suppliers and commercial e-commerce portal providers expressed concerns regarding the draft requirements in the December 2018 RFI,⁶ which underscores the critical need for an initial proof of concept that tests the program and the impact on stakeholders.

A primary concern from commercial e-commerce portal providers, suppliers, and agencies alike dealt with managing compliance with unique Government regulations. Congress directed GSA to follow commercial practices to the maximum extent practicable; however, Section 846 does not grant relief from existing statutes governing the purchase of COTS items. Many commercial e-commerce portal operators are nontraditional Government contractors, who expressed concern around the complex Government requirements for agency purchases. Furthermore, customer agencies expressed that further relief from existing statutory compliance requirements on lower dollar value COTS buys would enable their acquisition workforce to focus on more complex, risky, or larger buys.

Micro-purchase spending represents an important buying tool for agencies, maximizing their flexibility and reducing administrative cost in making low-risk, small dollar purchases to meet mission critical requirements. GSA's analysis of the GPC program found a significant and growing portion of Federal spend is taking place via commercial e-commerce portals when looking at a market basket of online portals, with spend of approximately \$135M through such portals in FY14 growing to almost \$260M by FY18.⁷ Given the recent increase in the MPT threshold to \$10,000 for both civilian agencies and the Department of Defense, this spending trend is expected to continue at an even greater pace.

The focus on MPT purchases will give agencies new insight on consumables being introduced to their supply chain. This will allow them to proactively mitigate supply chain risks by leveraging commercial supply chain risk practices that e-marketplaces already possess, such as country of origin, shipping and delivery accuracy, quality control, and supplier performance. It will also enable them to make strategic decisions surrounding areas such as identifying repeated MPT-level purchases that can be moved to on-contract spend, including the GSA Schedules and other existing Government-wide and agency-wide solutions.

GSA wants to build upon the tools and progress already implemented across the acquisition landscape to provide for better buying decisions for COTS items. These purchasing insights will provide better visibility into the types of products that program offices purchase from commercial e-commerce portals. By focusing on routine commercial items, rather than specialty items, GSA can both stay aligned to the way the commercial portals operate and test the benefits available. This will afford agencies the same range of choice they have today through GSA SmartPay® purchase cards, but offer greater visibility.

⁴ See <https://www.regulations.gov/document?D=GSA-GSA-2018-0002-0013>.

⁵ Limiting the initial proof of concept to the MPT minimizes additional requirements, given that FAR Part 12 does not apply to purchases under the MPT. Without this limitation, it would be impossible to comply with Congress' direction to follow commercial practices without significant legislative changes to compliance requirements. Consistent with Section 839 of the FY 2019 NDAA, the Federal Acquisition Regulatory Council has begun its analysis of compliance requirements that may be rolled back administratively and those that will require Congressional action. For full FAR Part 12 text, see: <https://www.acquisition.gov/content/part-12-acquisition-commercial-items>.

⁶ See <https://www.fbo.gov/notices/acccd46a07503f97c4578d80571e004b>.

⁷ GPC Sales are from a representative 'market basket' sampling of online portals from FY14-FY18 purchased using the GSA SmartPay® card.

2.3 E-Marketplace Model

GSA analyzed the three commercial e-commerce portal models identified in the Phase I report (e-commerce model, e-marketplace model, and e-procurement model) in order to determine which model was best for an initial proof of concept.⁸ As consideration, GSA had the following priorities in mind:

- **Competition** – How successful will the model be in promoting competition across the multiple portals that the legislation requires? To what extent does the model promote competition amongst its own supply base? How does the model encourage participation and competition for a diverse group of suppliers (e.g., small business, socioeconomic-designated businesses, etc.)?
- **User Experience** – What capabilities does the model have to enable an intuitive user interface? How closely does the model mimic the existing consumer experience?
- **Applicability to micro-purchase spend compliance** – Are the capabilities offered by the model aligned to the ‘light-touch’ nature of MPT buys that are subject to fewer rules and regulations?
- **Degree of complexity / investment cost** – How much configuration is required in order to implement an initial proof of concept? How quickly can GSA stand up an initial proof of concept to begin testing impacts? How can GSA test implementation on a small scale using existing authorities without significant cost to either GSA or the commercial e-commerce portal providers?

Based on market research, GSA found that each of the three models has its own unique approach and benefits to these priorities. However, the one model that best fits GSA’s priorities for an **initial** proof of concept is the e-marketplace model. This model enables GSA to implement an initial proof of concept quickly while minimizing Government burden and costs. It also keeps the user experience as close to existing commercial practice as possible for the commercial e-commerce portal providers, suppliers, and buyers. However, GSA is fully committed to assessing the best ways to leverage the benefits of the other models throughout implementation of the initial proof of concept.

- **Compare and Contrast E-Commerce Model and E-Marketplace Model:** E-marketplace model portal providers offer multiple suppliers on one platform and can rapidly onboard new third-party vendors, thus offering increased competition at the supplier level. Conversely, e-commerce models purchase products directly from their supplier base and sell them as inventory. With respect to increased competition at the supplier level using e-commerce models, GSA would have to offer many more portals than under an e-marketplace model, which would increase administrative costs for an untested hypothesis. While both models meet the Government’s needs for MPT compliance, without an interface to cut across the different e-commerce model portals, the user experience would be more complex. As such, the e-marketplace model is the better first test.
- **Compare and Contrast E-Procurement Model and E-Marketplace Model:** The e-procurement model’s robust workflows require upfront and complex configuration by the administering

⁸ See Section 4.1.1 for more information and definition of each commercial e-commerce portal model

agency. While this work would likely yield program management savings in the future, implementation would be longer, more complex, and more expensive. E-procurement models often enable customized data connections from the purchaser's systems to the e-procurement model providers, which would ultimately increase competition. Development and implementation of a customized end-to-end software e-procurement model environment may be a way to improve the user experience as the Section 846 program expands, particularly for purchases above the MPT as e-procurement model software typically has more robust approval workflows and rules engines. Here too, the e-marketplace model is the better first test.

- **Compare and Contrast E-Commerce Model and E-Procurement Model:** E-commerce and e-procurement models represent opposite ends of the complexity spectrum for both user experience and implementation. E-procurement models can be leveraged to organize multiple e-commerce offerings, thus increasing competition among e-commerce providers. E-procurement models may be complex and incorporate advanced workflows, whereas e-commerce models are typically simpler and more suited to the consumer experience. Additionally, e-procurement models typically charge user subscription fees while e-commerce models have few (if any) fees as they sell their own goods.

The initial proof of concept will inform investment decisions and will allow GSA to make course corrections based on collected evidence. This agile approach will allow GSA to innovate in a manageable way, while taking full advantage of the benefits each model has to offer. This includes assessing how to best integrate capabilities from the e-commerce model and/or e-procurement model into the program. While commercial marketplaces have been in operation for several years, business to business marketplaces are less mature. Basic controls and functionality are still being defined. GSA will continue to assess other models and may propose additional legislative changes as the business practices and models mature. To see more of GSA's market research of each model, see section 4.1.1.

3. Legislative Recommendation: Five-Year Pilot Authority

At this time, GSA is proposing a single legislative recommendation to Congress that will maximize the chances of success for the proof of concept and thus position the program for success. The recommendation seeks a temporary five-year micro-purchase threshold increase from \$10,000 to \$25,000 for purchases made through the GSA approved commercial e-commerce portals. The authority would begin the date GSA awards the initial proof of concept contracts and expire after five years. The authority could not be used before the GSA Administrator developed and publicly posted ordering procedures for making procurements through commercial e-commerce portals authorized for use under the program.

For more than two-decades, micro-purchase authority has provided a highly streamlined and administratively efficient method for purchasing common products and services with a purchase card.⁹ These benefits could become even more powerful if combined with advances in technology and enhanced data analytics made possible by modern-day buying platforms that can bring marketplace

⁹ Pub. L. 103-355, § 4301; 41 U.S.C. § 1902.

dynamics to a card holder in ways that could not be imagined when Congress first provided the authority in the Federal Acquisition Streamlining Act of 1994.¹⁰

Nearly a quarter of all current open market transactions above the micro-purchase threshold are \$25,000 or less (yet this only accounts for less than 1% of total spend). As a result, authorizing a \$25,000 micro-purchase threshold for this program, on a test basis, would give GSA the opportunity to provide a higher-value proof of concept and better evaluate the full potential of streamlined buying. Key benefits of a \$25,000 micro-purchase threshold include the following:

- **Real transformation** – GSA intends to limit purchases under the initial proof of concept to the increased micro-purchase threshold in order to mirror commercial buying practices to the maximum extent practicable. By providing trained purchase card holders with a \$25,000 micro-purchase threshold, ordering procedures, and modern e-commerce capabilities, such as product and supplier comparison tools and dynamic real-time pricing, GSA will be able to truly leverage commercial buying practices and maximize taxpayer dollars.
- **Shift from low value to high value work** – Consistent with the President’s Management Agenda, an increased MPT enables contracting officers to shift the acquisition workload in the \$10,000 to \$25,000 range (which accounts for up to 23% of all open market transactions over \$10,000 but less than 1% of spend) to purchase card holders, enabling acquisition training and expertise to be put to better use for higher dollar value acquisitions and have greater impact in reducing risk and securing value for taxpayers.
- **Maintain a consistent, unified procurement process across agencies** – Raising the MPT for the program would create a more compelling value proposition to agencies considering their own partnerships with commercial e-commerce portal providers and suppliers. Instead, agencies would be incentivized to work with GSA on a whole-of-Government solution, which better enables GSA to manage the program to the benefit of Government.
- **Further testing of acquisition reform** – Allows GSA to assess the impacts and benefits of the program, without the complexity or rules that apply over the MPT, prior to making significant investments in the program.
- **Increased transparency** – Supports important Government policy objectives through the identification of spend with mandatory source and socioeconomic programs.

Despite these benefits, current statutory business requirements for making purchases between \$10,000 and \$25,000, while highly flexible, are not optimized for transactions with purchase cards through commercial e-commerce portals. For purchases over \$10,000, for example, current law requires agencies to post public notices, solicit bids or proposals, and wait for responses.¹¹ These requirements, which were designed in an era when market research capabilities were more limited, are generally unnecessary, if not counter-productive, for purchases of commercial off-the-shelf products through a portal. A well-managed commercial e-commerce portal allows users through their browsers to capture the synergies of competition for market-tested simple off-the-shelf purchases by reviewing price and price-related terms and conditions, such as delivery and warranty terms, from multiple suppliers.

¹⁰ See note 3.

¹¹ 41 U.S.C. § 1708(a).

Equally challenging, interested sources for purchases between the MPT and \$25,000 must agree to comply with a range of government-unique requirements. For this reason, these agreements cannot currently be executed where the purchase card is used to conduct the purchase. Thus, without relief from the compliance requirements in this dollar range, which represent just 1% of total contract dollars spent on products each year, agencies will not be able to reap the critical efficiencies that could be obtained by combining the powers of purchase cards and e-commerce portals.

The proposed legislation is not intended to excuse buyers from important tenets of public procurement that have long been embraced in the Federal Government's procurement statutes, such as ensuring interested sources have easy access to the federal marketplace, buying under competitive market conditions, and making awards based on value for the taxpayer. Rather, the proposal is meant to allow the Government to test, under a limited-duration pilot program, how statutory requirements might be realigned so that these important tenets can be met effectively in the twenty-first century using twenty-first century strategies and tools.

During the market research phase, some stakeholders questioned the \$25,000 threshold, and in particular, the additional risk that might be introduced into the acquisition system if buyers are vested with the discretion to determine what sources will be considered. For nearly three decades, the Federal Acquisition Regulation (FAR) has authorized contracting officers to make purchases on the open market up to \$25,000 after soliciting three sources of their choosing, with certain parameters.¹² Over this same period, GSA has extended the same discretion for properly trained "ordering officials" to review the products of three Schedule holders.¹³ For this reason, GSA believes that its request to afford similar discretion to purchase card holders under this program should be viewed as a natural step in the evolution of the procurement process. In this regard, some stakeholders noted a \$25,000 micro-purchase threshold would align the program with their commercial practices and encourage even further participation, thus increasing competition.

The Section 809 Panel, in its most recent published Volume 3,¹⁴ called for bold and impactful transformation of acquisition and recommended the creation of a new model for both commercial item buying and the use of competition. Of particular note, the Panel recognizes the inefficiencies of the current statutory competition paradigm and implementing regulations. The panel recommended leveraging market forces in a less regulated environment to achieve better results in a more efficient manner.

The proposed MPT increase is well-aligned with these recommendations and represents a logical and manageable first step towards achieving the proposed benefits. The MPT is the fastest, most economical and efficient, and best aligned way to mirror commercial terms and conditions. Through use of this five-year pilot authority, Congress and other stakeholders will be able to understand impact before decisions on appropriate permanent authorities are made. The panel also recommended applying the same highly deregulated model to services. Under the current legislation, GSA cannot include services in the program. GSA does not intend to seek authority that goes beyond COTS at this time. However, from the outreach conducted in Phase II, GSA saw examples of emerging commercial

¹² [FAR 13.104\(b\)](#)

¹³ [FAR 8.405-1\(c\)](#)

¹⁴ See <https://section809panel.org/volume-3-report/>

capabilities related to “commoditized” services. GSA welcomes the opportunity to dialog with Congress about conducting further research regarding the feasibility of adding services to the platforms as the program expands above the micro-purchase threshold.

4. Market Research & Consultation Findings

As a core aspect of Phase II’s Market Research & Consultation, GSA engaged with hundreds of Industry and Government agency stakeholders through multiple industry days, RFIs, agency meetings, and one-on-one meetings to ensure comprehensive feedback was collected representing all potential viewpoints. See the below timeline for GSA’s engagement activities throughout Phase II.



While the above sections focused on GSA’s program and proof of concept implementation approach and key decisions, this section is focused on the supporting data for those decisions and answers the specific Phase II requirements posed by Congress in Section 846:

- A) Market analysis and initial communications with potential commercial e-commerce portal providers;
- B) Consultation with affected departments and agencies;
- C) An assessment of products or product categories suitable for purchase on the commercial e-commerce portals;
- D) An assessment of precautions necessary to safeguard information and protect against cybersecurity threats;
- E) A review of commercial terms and conditions in the context of Government requirements; and
- F) An assessment of the impact on existing programs.

4.1 (A) Market Analysis of Commercial E-Commerce Portal Providers

4.1.1 Commercial E-Commerce Portal Capabilities

GSA sought to better understand the differences in capabilities between the three commercial e-commerce portal models identified in Phase I, which served as the primary candidates for the initial proof of concept. GSA sought to identify which model(s) can most effectively test the concept of a

Government-wide commercial e-commerce portal program based on current Government requirements.

Phase I defined the three identified commercial e-commerce portal models as:

- **E-Commerce Model**: Providers use an online platform to sell their own proprietary items or wholesale products. These platforms do not include products sold directly by other companies - all offerings are part of the provider’s inventory. The provider is responsible for the fulfillment of product orders, including invoicing and delivery. E-commerce businesses in this model generate profit mainly from product prices that they directly manage and control.
- **E-Marketplace Model**: E-marketplace models connect buyers online with a portal provider’s proprietary products, third-party vendors, or both. Portal providers and third-party vendors are generally responsible for fulfilling orders for their respective products with some exceptions where the portal provider may complete order fulfillment for additional fees. Competition occurs in the e-marketplace model given the access to both proprietary and third-party products. Portal provider profits in this model are mainly derived through commissions on products sold by third-party vendors, supplier-listing fees, service-upgrade fees, or a combination of these fees.
- **E-Procurement Model**: The e-procurement model is a software-as-a-service model that is managed by the buying organization, and often has workflows connecting the internal procurement organizations to financial systems. The portal provider does not sell products in this model; instead, contracted suppliers are responsible for fulfilling orders — many from outside marketplaces — thus allowing for a larger supplier pool and horizontal price comparisons. Portal provider profits in this model are mainly derived from a combination of transaction fees and tiered subscription fees. These tiered subscription fees generally increase as the volume of transactions on the platform increase; however, most portal providers also cap transaction fees to encourage a high volume of transactions.

The following chart represents GSA’s research on the models as they relate to the key differentiating factors that GSA defined throughout its research.

<i>Factors</i>				
<u>Model</u>	<u>Competition</u>	<u>User Experience</u>	<u>Compliance</u>	<u>Investment / Complexity</u>
E-Commerce Model	Sell their own products/ wholesale goods. Facilitating order level competition requires greater change in buyer behavior	Advanced search and comparison functions, mimics consumer experience; <u>however</u> , only for individual suppliers’ products — cross-supplier search and comparison is limited	Basic features can support compliance needs at the MPT (account set-up, restriction of items, approval workflows, etc.)	Limited investment cost to access any one portal, however, to get supplier level competition would likely require a very large number of portals with some user interface solution, increasing GSA investment and administrative costs.

E-Marketplace Model	Promotes competition at the supplier level (sell third-party vendor products in addition to their own, provides support for onboarding)	Offers search and comparison functions, product and supplier reviews, mimics consumer experience	Basic features that can support compliance needs at the MPT (account set-up, restriction of items, approval workflows, etc.)	Limited investment cost to access e-marketplace model portals. Many existing suppliers access the markets through e-marketplace model offerings, negating the need for onboarding costs. Implementation would require GSA to address a number of supplier concerns.
E-Procurement Model	Promotes competition at the supplier level (only sells third-party vendor products, support for onboarding); variety of providers to promote competition at the contract level	Offers search and product comparison, though users are more likely to be unfamiliar with platform since it has no consumer equivalent	Robust support for purchases and approval workflows that are more applicable for compliance needs above the MPT	Typically charge a subscription fee for services and can often require more complex configurations, which exceeds need for an MPT offering. Further complicated by the need for multiple marketplaces.

4.1.2 Fees and Pricing

Market research and consultation revealed that commercial e-commerce portal models typically use one of two fee structures:

1. Provider fees charged to suppliers—fees charged by commercial e-commerce portal providers to suppliers for access to their marketplace, ranging from a flat fee to list items (e.g., fee per catalog item or sliding scale by catalog size) to a percentage of each purchase (e.g., % of per order cost)
2. Provider fees charged to buyers—fees charged for services provided such as data analysis and reporting (e.g., subscription fees or enterprise licensing)

As GSA needs a cost-recovery mechanism to run the program, it will pilot a model wherein the provider refunds a very small portion of the fee, akin to a referral sharing model. Ensuring good pricing is a central goal. GSA’s market research verified agencies already receive good prices on COTS items, and would be highly motivated to use a program which would either get them lower prices or would get them equivalent prices with added benefits or less effort. Industry has indicated that their interest in the program is largely driven by their forecast for how much volume it might attract—the more expected volume, the better the business value proposition despite potential losses in margin. For industry to offer that highly competitive pricing and the revenue sharing model, GSA needs to attract high business volume. The initial proof of concept will help test this out.

4.2 (B) Consultation with Agencies

In agency meetings, key areas of concern were around supply chain risks and ensuring guidance on the use of the commercial e-commerce portals through the issuance of ordering procedures.

4.2.1 Supply Chain Considerations

The specific supply chain considerations that were most often brought to GSA’s attention include:

- Counterfeit items for sale on marketplaces
- Availability of mission-critical COTS products
- Ensuring banned items are not available for Government purchase

- Timely delivery and correct handling of COTS items
- Ensuring compliance with AbilityOne purchasing requirements
- Purchasing from small business and other socioeconomic concerns

In the Phase I report, GSA stated that “sufficient protections need to be in place to ensure the appropriate safeguarding against supply chain risks (e.g., cyber threats, and counterfeit items)”.¹⁵ The risk to the Government primarily depends on the product purchased, which Congress identified in the initial authorizing legislation. Congress recently recognized the importance of supply chain risk in Federal acquisition through the passage of the SECURE Technology Act (the SECURE Act).¹⁶ GSA anticipates that the handling of supply chain requirements in the program will mature as the SECURE Act is implemented.

In particular, the SECURE Act has three primary components,¹⁷ one of which is to establish a Federal process to address critical supply chain risks. Throughout the implementation of the commercial e-commerce portals program, GSA will follow the rules and related guidance developed through implementation of the SECURE Act.

Additionally, there are a number of mitigating factors that GSA believes reduces the supply chain considerations outlined.

- **Curated Products:** Agencies have long borne ultimate responsibility for supply chain risk management under FISMA within their agencies and these responsibilities will be reinforced through the implementation of the SECURE Act. Commercial e-commerce portal providers currently possess the capability to curate or allow agencies to filter what Federal buyers can view and purchase. This functionality is an important protection agency partners have expressed interest in, allowing them to prohibit categories of items from purchase. This capability does not currently exist at the MPT level in the open market.
- **Transparency:** GSA recognizes that purchase card holders are already buying items in the open market through commercial e-commerce portals or through brick and mortar stores. GSA views transparency into what agencies are buying at the micro-purchase threshold level as an opportunity to have further visibility into what is being introduced into the Federal Supply Chain to better identify and mitigate risk.
- **Applying the Existing Requirements:** Certain statutory requirements apply to all Federal purchases. Examples include the statutory prohibition on certain purchases from Huawei Technologies, ZTE, and Kaspersky Lab.¹⁸ Ensuring that all purchase card holders in the open

¹⁵ For full report, see: <https://interact.gsa.gov/sites/default/files/Commercial%20Platform%20Implementation%20Plan.pdf>

¹⁶ Public Law 115-390

¹⁷ To require the Secretary of Homeland Security to establish a security vulnerability disclosure policy, to establish a bug bounty program for the Department of Homeland Security, to amend title 41, United States Code, to provide for Federal acquisition supply chain security, and for other purposes. [Full text](#)

¹⁸ FY18 NDAA Section 1634(c)(1) -

Prohibition on use of products and services developed or provided by Kaspersky Lab.

FY19 NDAA Section 889(f)(3)(A) -

Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

market are aware of the scope of these restrictions is difficult; GSA will be prepared to require that such items cannot be purchased through the commercial e-commerce portals.

- **Leveraging Commercial Supply Chain Risk Practices:** GSA is looking to leverage commercial supply chain risk practices commercial e-commerce portal providers already possess. In conversations with commercial e-commerce portal providers, GSA learned many already institute supply chain protection practices to address existing issues such as counterfeit items, given such concerns are also important to their commercial business.
- **Dollar Value:** The initial proof of concept is limited to orders below the micro-purchase threshold. By keeping purchases below this threshold, risk is reduced while maximizing the opportunity to modernize the experience.

It is not GSA's role, nor is it the intention of the proof of concept, to "solve" all supply chain security issues on behalf of the purchasing agencies. Instead, the initial proof of concept is designed to be a viable alternative to the open-market for COTS purchases that also produces several short-term benefits for supply chain security, particularly vis-a-vis those open market buys today. Although buyers will continue to be responsible for ensuring they are receiving genuine products, common portal features can help better inform buyers' decisions (e.g. reviews, stringent supplier/product enforcement rules, customer service capabilities). Additionally, enhanced access to product and spend data will allow for greater visibility into what products are being introduced into the supply chain. In the long term, GSA expects that the initial proof of concept will increase the Government's insight into purchase data, wherein under the current state, the Government has limited insight into these open-market buys.

4.2.2 Ordering Procedures

GSA will establish ordering procedures as a mechanism to ensure competition and smart buying practices. It will help buyers navigate supply chain rules and regulations. The ordering procedures will reflect the key tenets of the market but simplify the existing process for buyers. This will help drive adoption (e.g. versus using a consumer website where these guidelines are not in place) as well as ensure key program objectives are met, including competition and utilization of small businesses. GSA will also require the commercial e-commerce portals to have a place for the buyer to document the purchase decision to meet the competition requirements of the legislation. The ordering procedures are intended to make sure that these requirements are met while continuing to drive purchase decisions based on achieving the best value.

4.3 (C) Assessment of Products / Product Categories

Based on the market research and consultation conducted and the decision to limit purchases through the initial proof of concept to the MPT level. GSA does not intend to focus on existing strategic contracts or on categories delegated to other agencies to manage. Instead, GSA will target the range of routine commercial items found on today's commercial e-commerce platforms (with office supplies and industrial products being amongst the most common) to align the purchasing experience with the commercial market and provide a strong incentive to use the program versus just purchasing the item in the open market from a commercial website.

As required by the legislation, GSA paid special attention to medical products and IT in working through this issue. GSA met with industry associations from both communities to ensure it understood the risks

and found that there are real concerns focused primarily around supply chain security. For this reason, GSA does not intend to start with specialized marketplaces for either of these categories. In keeping with the requirements of Section 846 to follow commercial practice, GSA will make the full range of common consumables available and allow agencies to establish further limitations. GSA will not offer specialty marketplaces for IT or healthcare items until it has performed appropriate research to know when and how such specialty marketplaces fit.

The decision to limit purchases on the commercial e-commerce portals to under the MPT limit combined with the inherent nature of open market purchases tending to be more tactical, “one-off” purchases instead of strategic, recurring buys, will limit the risk to buyers. The data collected through the program effort will help to mitigate this risk by providing agencies with better insight as to what their employees are purchasing and may help, among other things, as they strengthen their supply chain risk management capabilities. GSA is being very deliberate to maintain a balance of incentives for both Government and industry to use this Government-wide program versus continuing to make one-off purchases on their own. The proposal to increase the micro-purchase threshold is one such key element.

Through additional agency consultation and market research, GSA also learned that agencies were interested in buying services through the portals. This aligns with the recently released Section 809 Panel Volume 3 recommendation to “replace commercial buying and the existing simplified acquisition procedures and thresholds with simplified readily available procedures for procuring readily available products and services.”¹⁹ While services are not within the scope of Section 846, they are within the scope of MPT purchases. GSA sees the proof of concept as a valuable tool for evaluating if broad categories of services should be added in the future and welcomes researching this further for later inclusion as a formal part of the program.

4.4 (D) Assessment of Cybersecurity Precautions

GSA’s market research concluded that any commercial e-commerce portal provider must implement measures for protection of the portal along the many facets of cybersecurity, which include, but are not limited to:

- Protecting financial data from theft/fraud
- Defense against cyber attacks
- Compliance with information security standards
- Data storage
- Vulnerability assessments/monitoring
- Encryption
- Disaster recovery
- Network monitoring

By and large, industry is already practicing many of these cybersecurity safeguards, as well as taking a proactive stance against future risks. While all commercial e-commerce portal provider RFI responders indicated they have robust cybersecurity practices and solutions, few were willing to publicly share their proprietary capabilities—therefore the specific details of how commercial e-commerce portal providers

¹⁹ See <https://section809panel.org/volume-3-report/>

will meet the stated protection needs will be fleshed out during the acquisition for the initial proof of concept. Commercial e-commerce portal providers will have to demonstrate the ability to proactively meet these needs and GSA will need to develop an appropriate monitoring mechanism to verify the providers' ongoing ability to mitigate cybersecurity risks.

4.5 (E) Use of Commercial T&Cs

One of GSA's primary roles in standing up the program will be setting terms and conditions (T&Cs) in its contracts with commercial e-commerce portal providers that help to ensure that stakeholder needs and specific Government requirements are met while also mitigating large risk areas. Section 846 of the FY18 NDAA directs GSA to accept commercial e-commerce portal providers' commercial T&Cs to the maximum extent practicable. By beginning the initial proof of concept at this level, GSA can make maximum use of the commercial T&Cs with only a light addition of terms and conditions required by statute. One of the strongest tools at GSA's disposal will be to engage in a clearly defined contract with commercial e-commerce portal providers that identifies needed capabilities across their three defined objectives:

- **Modernize the COTS buying experience:** Account creation, product ratings, supplier reviews, invoicing, customer service
- **Attract buyers and shift work away from COs:** Supplier identification, terms applicable to purchases by Government users, program attribute identification, product filtering
- **Use transparency to drive better buying decisions:** spend data and analytics, required data elements, catalog data access, restriction of use on data

To run an effective program and serve taxpayers and Federal agencies, there are several distinct areas that the Government should ensure are covered by T&Cs:

Fee transparency — Commercial e-commerce portal providers must be upfront and clear with fees charged to suppliers to ensure a level playing field. This clarity will provide additional opportunities for small businesses to participate, as they will have a choice regarding which of the multiple commercial e-commerce portal providers they want to partner within the program.

Ensuring small business participation — GSA understands there are challenges that must be overcome relative to how to get accurate data on small business suppliers and their products and services so that agencies can meet their small business goal requirements. GSA will continue to explore capabilities related to small business identification throughout the implementation of the initial proof of concept.

Socioeconomic community participation & AbilityOne — Providers/suppliers will be required to ensure that certain types of products are easily available and identifiable to the buyer (e.g., AbilityOne product lists). Similarly, GSA will require commercial e-commerce portals to limit alternatives/substitutes to AbilityOne products. GSA also intends to add requirements to ensure businesses from preference programs are represented on the platforms and to help buyers identify their products.

Data security — The program will be capturing key data elements (as outlined in the December RFI²⁰), therefore data storage (by commercial e-commerce portal provider and suppliers) should follow highly

²⁰ See <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=acccd46a07503f97c4578d80571e004b>

rigorous standards for both storage and access. Commercial e-commerce portals/suppliers must provide data encryption, multi-level firewalls, security monitoring, intrusion alerts, redundancy and disaster recovery plans, etc. Additionally, commercial e-commerce portal providers should be responsible for any data breaches of their systems, either via access by commercial e-commerce portal provider employees themselves or by unauthorized breaches of their systems.

4.6 (F) Impact to Existing Programs

From market research and consultation GSA offers the following observations on specific concerns the Government has heard through its efforts over the last year:

Existing Government E-commerce & Other Contract Programs

GSA's Federal Marketplace (FMP) strategy is a broad-based effort to ensure a fast, efficient, and modern experience in buying. It encompasses three pillars of policy, process and technology and a number of projects including the implementation of Section 846. The FMP strategy includes both the reform of the Multiple Award Schedule (MAS) program and the use of commercial e-commerce technologies to simplify product buying. Both efforts are complementary in that they seek to reduce regulatory barriers, increase compliance, empower buyers, speed the process, gain data to understand and analyze spend, and reduce the administrative cost of buying. At the same time, they focus on vastly different market segments.

The majority of the MAS program spend is concentrated in professional and IT services, with the MAS Reform effort focused on moving towards solution-based offerings made up of both products and services. Contrast that with commercial e-commerce offerings and the focus of this program on tactical, one-off purchases conducted on the open market. While there will be a limited set of products available through multiple channels, it represents a very small percentage of total spend. Moreover, GSA views the initial proof of concept as a means to test the cost effectiveness and efficiency of serving the market through multiple channels, while gaining greater visibility into spend.

Concerns have been raised that the commercial e-commerce portals program could compete with the MAS modernization effort in particular. A number of MAS contract holders have warned that the ability to sell COTS products under the commercial e-commerce portals program where TAA does not apply to sales below the MPT threshold, could create an unintended economic incentive for contractors to abandon the MAS program (where this requirement does exist). The concern is this could leave agency customers with fewer options to buy U.S. made or TAA-compliant products, which the Buy American policies seek to promote in E.O. 13788, Buy American and Hire American (April 18, 2017).

At this time, GSA does not have a factual basis for concluding that satisfied agency customers would stop using the MAS or that MAS contractors currently selling COTS under the MPT would leave the program without clear indication that their customers plan to do the same. The MPT channels are available today and exist in concert with the Schedules program. In light of the ongoing improvements to the MAS program, GSA anticipates that satisfied MAS customers, as a general matter, are likely to continue using the MAS program for their COTS purchases and new customers would be introduced to

the GSA suite of offerings. The same argument applies to the supply chain risk management (SCRM) discussion.²¹

More generally, both the MAS program and GSA Global Supply are important programs and will continue to be central to GSA's suite of offerings. Starting with the initial proof of concept below the MPT allows GSA to focus on gaining insights into micro-purchase level spend. While this may add some competition to existing programs, such impact is not anticipated to be significant given the size and scope of this initial proof of concept and the statutory limitations on the program, even when fully scaled (i.e., COTS under the SAT). This multi-channel strategy will continue to reinforce the value of existing programs, while also introducing new open-market customers to the GSA ecosystem. Testing the initial proof of concept may help GSA in broader efforts to streamline and speed up acquisition processes, may help Federal agencies shift contracting officers towards more complex, and higher dollar work, and may help agencies reduce administrative costs by using a full portfolio of GSA offerings.

Preference Programs (8(a), Socioeconomic designations, etc.)

GSA recognizes this program must remain aligned with existing preference programs that meet public policy priorities. GSA continues to be dedicated to ensuring that all businesses, including small disadvantaged businesses, women-owned small businesses, service-disabled veteran-owned small businesses, and small businesses in Historically Underutilized Business Zones have the opportunity for fair representation on any portal established through this program. Through consultation with industry stakeholders, GSA learned that commercial e-commerce portal providers offer various capabilities that can help support this priority, such as identifying specific suppliers or products with socioeconomic labels.

Mandatory Sources of Supply (FAR 8.002: AbilityOne & UNICOR)

Mandatory sources of supply defined in FAR Part 8 represent a public policy priority, long recognized in statute and Governmentwide policy, and GSA is committed to ensuring that they are effectively leveraged in this program. As with preference programs, GSA has identified commercial e-commerce portal provider capabilities that can help support this priority, namely supplier and item designation "flags" on portals that make it easier for buyers to search, identify and buy items that come from a mandatory source of supply. On the back end, GSA also expects that sales data will enable agencies to analyze purchases to see which are not adhering to proper regulations and to promote future compliance.

Category Management

GSA sees this initiative as a natural extension of ongoing category management efforts by applying the core category management principle of smarter, data-driven buying decisions to COTS items. Specifically, GSA anticipates that improving spend visibility into COTS items will be a catalyst for putting this concept into practice, allowing agencies to newly leverage their buying power by pooling large areas

²¹ SCRM is encouraging agencies to more carefully consider the potential harm associated with buying certain types of non-TAA compliant foreign-made products on the open market and reinforcing the value of buying U.S.-made or TAA-compliant products. That said, GSA recognizes the importance of this issue, and intends to monitor migration activity as part of its responsibilities as manager of the Schedules program and as executive agent for the Section 846 program. GSA will also consider this issue as part of the reviews it conducts in connection with E.O. 13788 to strengthen compliance with the Buy American Act, which includes understanding the current practices followed by platform providers and third party sellers in sharing information with potential customers regarding where a product has been manufactured.

of COTS spend that were previously unknown to them. With access to the spend data, agencies and category managers will have greater visibility into their tactical COTS item spend, while also having the ability to identify opportunities for managing their spend in a more strategic manner using category management.

5. Conclusion

Section 846 is an opportunity for the Government to review, assess, and modernize its current approach toward the buying of COTS items. Commercial technology has made comparative shopping easier, increased transparency, and opened opportunities to a broader pool of suppliers. The business-to-business side of online marketplaces are new and quickly evolving. GSA anticipates significant maturation and changes in these marketplaces over the next few years. To test whether there are savings to be had, as well as the impact on the broader goals of the acquisition system, and the fast changing landscape, GSA will begin with an initial proof of concept using the e-marketplace model up to the micro-purchase threshold.

To maximum chances of success, GSA is proposing a temporary five-year micro-purchase threshold increase from \$10,000 to \$25,000 for purchases made by all Federal agencies through GSA-approved commercial e-commerce portals, and anticipates making additional proposals after the initial proof of concept is operational.

Next steps include further coordination with industry and Federal agencies and issuance of a draft solicitation. Later this year, GSA will issue a final solicitation and make multiple awards to begin the initial proof of concept. As GSA studies these results, it will report back on its findings and will use lessons learned to make decisions about a larger scale implementation.

1 **SEC. ____. MODIFICATIONS TO PROCUREMENT THROUGH COMMERCIAL E-**
2 **COMMERCE PORTALS.**

3 Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law
4 115-91; 41 U.S.C. 1901 note) is amended—

5 (1) by redesignating subsections (j) and (k) as subsections (k) and (l),
6 respectively; and

7 (2) by inserting after subsection (i) the following new subsection:

8 “(j) MICRO-PURCHASE THRESHOLD.—

9 “(1) The micro-purchase threshold for a procurement through a commercial e-
10 commerce portal used under the program established pursuant to subsection (a) is
11 \$25,000.

12 “(2) The authority provided by this subsection shall not be used before the
13 Administrator develops and publicly posts ordering procedures for making procurements
14 through commercial e-commerce portals authorized for use under the program.

15 “(3) This authority expires five years after the first proof of concept contract is
16 awarded in accordance with subsection (a).”

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 (FY 2018)²², as amended, directed the General Services Administration (GSA) to establish a commercial e-commerce portal for the purposes of “enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial

²² Pub. L. 115-91, 131 Stat. 1283 at 1483-1487, 41 U.S.C. 1901 note.

products.” This proposal would amend Section 846 to authorize a \$25,000 micro-purchase threshold specific to this program.²³ The authority could not be used before the Administrator developed and publicly posted ordering procedures for making procurements through commercial e-commerce portals authorized for use under the program. This authority would expire five years after the first proof of concept contract is awarded in accordance with Section 846(a).

For more than two decades, micro-purchase authority has provided a highly streamlined and administratively efficient method for purchasing common products and services with a purchase card.²⁴ These benefits could become even more powerful if combined with advances in technology and enhanced data analytics made possible by modern-day buying platforms that can bring marketplace dynamics to a card holder in ways that could not be imagined when Congress first provided the authority in the Federal Acquisition Streamlining Act of 1994.²⁵

Nearly a quarter of all current open market transactions above the micro-purchase threshold are \$25,000 or less. As a result, authorizing a \$25,000 micro-purchase threshold for this program, on a test basis, would give GSA the opportunity to provide a higher-value proof of concept and better evaluate the full potential of streamlined buying. Key benefits of a \$25,000 micro-purchase threshold include the following:

- **Shift from low value to high value work** – Consistent with the President’s Management Agenda, authorizing a \$25,000 micro-purchase threshold will enable contracting officers to shift the acquisition workload between the current \$10,000 micro-purchase threshold and the proposed \$25,000 micro-purchase threshold to purchase card holders, enabling acquisition training and expertise to be put to better use for higher dollar value acquisitions, and thereby allow contracting officers to have greater impact in reducing risk and securing value for taxpayers.
- **Maintain a consistent, unified procurement process across agencies** – Authorizing a \$25,000 micro-purchase threshold for the program would create a more compelling value proposition to agencies considering their own partnerships with portal providers and suppliers to instead work with GSA on a whole-of-Government solution, which better enables GSA to manage the program to the benefit of Government.
- **Further testing of acquisition reform** – Authorizing a \$25,000 micro-purchase threshold will allow GSA to more effectively assess the impacts and benefits of the program, prior to making significant investments in the program.
- **Increased transparency** – Authorizing a \$25,000 micro-purchase threshold will increase spend through this program, which in turn supports important Government policy objectives of identifying spend with mandatory source and socioeconomic programs.

²³ In accordance with 10 U.S.C. § 2338 and 41 U.S.C. § 1902, the current micro-purchase threshold for defense and civilian agencies is \$10,000.

²⁴ Pub. L. 103-355, § 4301; 41 U.S.C. § 1902.

²⁵ See note 3.

Despite these benefits, current statutory business requirements for making purchases between \$10,000 and \$25,000, while highly flexible, are not optimized for transactions with purchase cards through commercial e-commerce portals. For purchases over \$10,000, for example, current law requires agencies to post public notices, solicit bids or proposals, and wait for responses.²⁶ These requirements, which were designed in an era when market research capabilities were more limited, are generally unnecessary, if not counter-productive, for purchases of commercial products through a portal. A well-managed commercial e-commerce portal allows users through their browsers to capture the synergies of competition for market-tested simple product purchases by reviewing price and price-related terms and conditions, such as delivery and warranty terms, from multiple suppliers.

Equally challenging, interested sources for purchases between the MPT and \$25,000 must agree to comply with a range of government-unique requirements. For this reason, these agreements cannot currently be executed where the purchase card is used to conduct the purchase. Thus, without relief from the compliance requirements in this dollar range, which represent just 1% of total contract dollars spent on products each year, agencies will not be able to reap the critical efficiencies that could be obtained by combining the powers of purchase cards and e-commerce portals.

The proposed legislation is not intended to excuse buyers from important tenets of public procurement that have long been embraced in the Federal Government's procurement statutes, such as ensuring interested sources have easy access to the federal marketplace, buying under competitive market conditions, and making awards based on value for the taxpayer. Rather, the proposal is meant to allow the Government to test, under a limited-duration pilot program, how statutory requirements might be realigned so that these important tenets can be met effectively in the twenty-first century using twenty-first century strategies and tools.

During the Section 846 Phase II market research phase, some stakeholders questioned the \$25,000 threshold, and in particular, the additional risk that might be introduced into the acquisition system if buyers are vested with the discretion to determine what sources will be considered. The Federal Acquisition Regulation (FAR) has long authorized a "three phone calls process," where contracting officers can make purchases on the open market up to \$25,000 after soliciting three sources of their choosing, within certain parameters.²⁷ Moreover, GSA has extended the same discretion for properly trained "ordering officials" to review the products of three Federal Supply Schedule contract holders.²⁸ As such, GSA believes its request to afford similar discretion to purchase card holders under this program should be viewed as a natural step in the evolution of the procurement process. In this regard, some stakeholders noted a \$25,000 micro-purchase threshold would align the program with their commercial practices and encourage even further participation, thus increasing competition.

²⁶ 41 U.S.C. § 1708(a).

²⁷ 48 CFR 13.104(b).

²⁸ 48 CFR 8.405-1(c).

The Section 809 Panel, in its most recent published Volume 3, called for bold and impactful transformation of acquisition and recommended the creation of a new model for both commercial item buying and the use of competition. Of particular note, the Panel recognizes the inefficiencies of the current statutory competition paradigm and implementing regulations. The panel recommended leveraging market forces in a less regulated environment to achieve better results in a more efficient manner.²⁹

The proposed \$25,000 micro-purchase threshold authority is well aligned with these recommendations and represents a logical and manageable first step towards achieving the proposed benefits. The micro-purchase threshold is the fastest, most economical and efficient, and best aligned way to mirror commercial terms and conditions. Through use of this five-year pilot authority, Congress and other stakeholders will be able to understand impact before decisions on appropriate permanent authorities are made.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Changes to Existing Law: This proposal would make the following changes to Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 41 U.S.C. 1901 note), as amended by Section 838 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232):

SEC. 846. PROCUREMENT THROUGH COMMERCIAL E-COMMERCE PORTALS.

(a) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to procure commercial products through commercial e-commerce portals for purposes of enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products. The Administrator shall carry out the program in accordance with this section, through multiple contracts with multiple commercial e-commerce portal providers, and shall design the program to be implemented in phases with the objective of enabling Government-wide use of such portals.

(b) USE OF PROGRAM.—The head of a department or agency may procure, as appropriate, commercial products for the department or agency using the program established pursuant to subsection (a).

(c) IMPLEMENTATION AND REPORTING REQUIREMENTS.—The Director of the Office of Management and Budget, in consultation with the Administrator and the heads of other relevant departments and agencies, shall carry out the implementation phases set forth in, and submit to the appropriate congressional committees the items of information required by, the following paragraphs:

²⁹ See Section 809 Panel, “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations,” Volume 3 of 3, January 2019, Recommendation 35, Page 23. <https://section809panel.org/volume-3-report/>.

(1) PHASE I: IMPLEMENTATION PLAN.—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.

(2) PHASE II: MARKET ANALYSIS AND CONSULTATION.—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), recommendations for any changes to, or exemptions from, laws necessary for effective implementation of this section, and information on the results of the following actions:

(A) Market analysis and initial communications with potential commercial e-commerce portal providers on technical considerations of how the portals function (including the use of standard terms and conditions of the portals by the Government), the degree of customization that can occur without creating a Government-unique portal, the measures necessary to address the considerations for supplier and product screening specified in subsection (e), security of data, considerations pertaining to nontraditional Government contractors, and potential fees, if any, to be charged by the Administrator, the portal provider, or the suppliers for participation in the program established pursuant to subsection (a).

(B) 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.

(C) An assessment of the products or product categories that are suitable for purchase on the commercial e-commerce portals.

(D) An assessment of the precautions necessary to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats.

(E) A review of standard terms and conditions of commercial e-commerce portals in the context of Government requirements.

(F) An assessment of the impact on existing programs, including schedules, set-asides for small business concerns, and other preference programs.

(3) PHASE III: PROGRAM IMPLEMENTATION GUIDANCE.—Not later than two years after the date of the submission of the implementation plan and schedule required under paragraph (1), guidance to implement and govern the use of the program established pursuant to subsection (a), including protocols for oversight of procurement through the program, and compliance with laws pertaining to supplier and product screening requirements, data security, and data analytics.

(4) ADDITIONAL IMPLEMENTATION PHASES.—A description of additional implementation phases, as determined by the Administrator, that includes a selection of agencies to participate in any such additional implementation phase (which may include the award of contracts to multiple commercial e-commerce portal providers).

(d) CONSIDERATIONS FOR COMMERCIAL E-COMMERCE PORTALS.—The Administrator shall consider commercial e-commerce portals for use under the program established pursuant to subsection (a) that are widely used in the private sector and have or can be configured to have features that facilitate the execution of program objectives, including features related to supplier and product selection that are frequently updated, an assortment of product and supplier reviews, invoicing payment, and customer service.

(e) INFORMATION ON SUPPLIERS, PRODUCTS, AND PURCHASES.—

(1) SUPPLIER PARTICIPATION AND PRODUCT SCREENING.—The Administrator shall provide or ensure electronic availability to a commercial e-commerce portal provider awarded a contract pursuant to subsection (a) on a periodic basis information necessary to ensure compliance with laws pertaining to supplier and product screening as identified during implementation phase III, as described in subsection (c)(3).

(2) PROVISION OF ORDER INFORMATION.—The Administrator shall require each commercial e-commerce portal provider awarded a contract pursuant to subsection (a) to provide order information as determined by the Administrator during implementation phase II, as described in subsection (c)(2).

(f) RELATIONSHIP TO OTHER PROVISIONS OF LAW.—

(1) All laws, including laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, apply to the program established pursuant to subsection (a) unless otherwise provided in this section.

(2) A procurement of a product made through a commercial e-commerce portal under the program established pursuant to subsection (a) is deemed to be an award of a prime contract for purposes of the goals established under section 15(g) of the Small Business Act (15 U.S.C. 644(g)), if the purchase is from a supplier that is a small business concern.

(3) Nothing in this section shall be construed as limiting the authority of a department or agency to restrict competition to small business concerns.

(4) Nothing in this section shall be construed as limiting the applicability of section 1341 of title 31, United States Code (popularly referred to as the Anti-Deficiency Act).

(5) A procurement of a product made through a commercial e-commerce portal under the program established pursuant to subsection (a) is deemed to satisfy requirements for full and open competition pursuant to section 2304 of title 10, United States Code, and section 3301 of title 41, United States Code, if—

(A) there are offers from two or more suppliers of such a product or similar product with substantially the same physical, functional, or performance characteristics on the online marketplace; and

(B) the Administrator establishes procedures to implement subparagraph (A) and notifies Congress at least 30 days before implementing such procedures.

(g) USE OF COMMERCIAL PRACTICES AND STANDARD TERMS AND CONDITIONS.—A procurement of a product through a commercial e-commerce portal used under the program established pursuant to subsection (a) shall be made, to the maximum extent practicable, under the standard terms and conditions of the portal relating to purchasing on the portal.

(h) DISCLOSURE, PROTECTION, AND USE OF INFORMATION.—In any contract awarded to a commercial e-commerce portal provider pursuant to subsection (a), the Administrator shall require that the provider—

(1) 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 in a manner that identifies the Federal Government, or any of its departments or agencies, as the purchaser, except if the information is needed to process or deliver an order or the Administrator provides written consent;

(2) agree to take the necessary precautions to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats; and

(3) agree not to use, for pricing, marketing, competitive, or other purposes, any information, including any Government-owned data, such as purchasing trends or spending habits, related to a product from a third-party supplier featured on the commercial e-commerce portal or the transaction of such product, except as necessary to comply with the requirements of the program established in subsection (a).

(i) SIMPLIFIED ACQUISITION THRESHOLD.—A procurement through a commercial e-commerce portal used under the program established pursuant to subsection (a) shall not exceed the simplified acquisition threshold in section 134 of title 41, United States Code.

(j) MICRO-PURCHASE THRESHOLD.—

(1) The micro-purchase threshold for a procurement through a commercial e-commerce portal used under the program established pursuant to subsection (a) is \$25,000.

(2) The authority provided by this subsection shall not be used before the Administrator develops and publicly posts ordering procedures for making procurements through commercial e-commerce portals authorized for use under the program.

(3) This authority expires five years after the first proof of concept contract is awarded in accordance with subsection (a).

~~(j)~~(k) COMPTROLLER GENERAL ASSESSMENTS.—

(1) ASSESSMENT OF IMPLEMENTATION PLAN.—Not later than 90 days after the Director of the Office of Management and Budget submits the implementation plan described in subsection (c)(1) to the appropriate congressional committees, the Comptroller General of the United States shall submit to the appropriate congressional committees an assessment of the plan, including any other matters the Comptroller General considers relevant to the plan.

(2) ASSESSMENT OF PROGRAM IMPLEMENTATION.—Not later than three years after the first contract with a commercial e-commerce portal provider is awarded pursuant to subsection (a), the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the challenges and benefits the General Services Administration and participating departments and agencies observe regarding

implementation of the program established pursuant to subsection (a). The report shall include the following elements:

(A) A description of the acquisition of the commercial e-commerce portals (including the extent to which the portals had to be configured or otherwise modified to meet the needs of the program) costs, and the implementation schedule.

(B) A description of participation by suppliers, with particular attention to those described under subsection (e), that have registered or that have sold goods with at least one commercial e-commerce portal provider, including numbers, categories, and trends.

(C) The effect, if any, of the program on the ability of agencies to meet goals established for suppliers and products described under subsection (e), including goals established under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

(D) A discussion of the limitations, if any, to participation by suppliers in the program.

(E) Any other matters the Comptroller General considers relevant to report.

~~(k)~~(1) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of General Services.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the following:

(A) The Committees on Armed Services of the Senate and House of Representatives.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(C) The Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(3) COMMERCIAL E-COMMERCE PORTAL.— The term “commercial e-commerce portal” means a commercial solution providing for the purchase of commercial products aggregated, distributed, sold, or manufactured via an online portal. The term does not include an online portal managed by the Government for, or predominantly for use by, Government agencies.

(4) COMMERCIAL PRODUCT.—The term “commercial product” means a commercially available off-the-shelf item, as defined in section 104 of title 41, United States Code, except the term does not include services.

(5) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).³⁰

³⁰ Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 41 U.S.C. 1901 note) was amended by Section 838 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232). Subsection (b) of Section 838 included the following Sense of Congress:

“(b) Sense Of Congress.—It is the sense of Congress that—

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- (1) the implementation of any e-commerce portal under such section 846 to procure commercial products will be done in a manner that will enhance competition, expedite procurement, and ensure reasonable pricing of commercial products;
 - (2) the implementation of the e-commerce portal will be completed with multiple contracts with multiple commercial e-commerce portal providers; and
 - (3) the Administrator of the General Services Administration should require any e-commerce portal provider to take the necessary precautions to safeguard data of all other e-commerce portal providers and any third-party suppliers.”