“Portal of Portals” – GSA’s (Unwritten) Vision for COTS E-Commerce Marketplaces

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Last month, the General Services Administration (“GSA”) and the Office of Management and Budget released their Phase 1 Implementation Plan (the “Plan”) for Section 846 of the National Defense Authorization Act (“NDAA”) of 2018 (“Procurement Through E-Commerce Portals,” known hereafter as “Portals Program”). Section 846 directs GSA to establish one (or several) “e-commerce portals,” and in its recently-released Plan, GSA made four legislative requests to Congress GSA believes are necessary not only to bring its vision for the Portals Program online, but to make it the preferred method for COTS procurement government-wide. On April 3, 2018, GSA officials discussed these legislative requests at a panel discussion hosted by the Coalition for Government Procurement (“CGP”). During the CGP panel, GSA officials were candid about their current vision for the Portals Program and the rationale behind these legislative requests. Their comments relating to two of the four legislative requests (bolded below) were particularly informative, as they shed some light on their unwritten vision for the Portals Program, as well as the deal GSA is hoping to strike with Congress.

“Clarify and broaden the definition of commercial e-commerce portal.”

Since the House Armed Services Committee released the original Section 801 language, Congress has been clear the Portals would not be operated by a
Government entity (e.g., GSA). This decision appeared to be a direct attack on the GSA Schedules Program, which has been the preferred COTS procurement method for over 20 years. Even as Congress eventually tasked GSA with developing and implementing the Portals Program, it did not waive from the requirement that Portals must be operated by commercial entities. Asking GSA to implement a Portals Program specifically designed to compete with their existing Schedules Program created an interesting dilemma for the agency. To its credit, GSA has seized the tasking as an opportunity to ensure the agency has a critical and ongoing role in the Portals Program.

During the CGP panel, GSA officials conceded they’re considering the agency serving as a “Portal of Portals.” They analogized this concept to travel websites that search for the best airline fares across airline websites. GSA believes it already possesses the statutory authority to operate as the “Portal of Portals,” but is asking for explicit legislative authority nonetheless (via a broadening of the definition of “commercial e-commerce portal”). This “Portal of Portals” concept is interesting for a few reasons.

- First, the phrase “Portal of Portals,” or even the general concept, does not appear in GSA’s written Plan. GSA’s candid comments were the first time it floated this concept publicly, and it will be interesting to see how Congress responds given their clear desire for the Portals Program to be operated by a commercial entity.

- Second, the concept demonstrates that GSA clearly prefers to award multiple Portal contracts. This is a clear deviation from the original Section 801 language, which contemplated a non-competitive award to a single Portal provider. Under a “Portal of Portals” approach, GSA would serve as that single provider, with many approved Portals being aggregated on GSA’s website.

- Third, GSA knows this concept is NOT what Congress envisioned when it was drafting Section 846, and GSA is using this legislative request as a way to get an official stamp of approval for its concept. If GSA officials truly believed they do not need additional statutory authority to serve as the “Portal of Portals,” then this legislative request would be unnecessary.

- Fourth, GSA believes that having an aggregator-like overlay where Government purchasers only need one set of login credentials to access all approved portals will make its Program the go-to destination for COTS procurements. A single search across all approved Portals, with up-to-the-minute dynamic pricing, certainly would bring COTS procurement into the 21st century.

Big picture, should Congress grant this legislative request (and that alone will be interesting to follow), the likely result will be GSA awarding many Portal contracts, and these awardees competing for business on a website operated by GSA. Call me crazy, but I think I’ve seen this from GSA before....

“Increase the micro-purchase threshold to $25,000 to facilitate simple comparison shopping for purchases made through GSA approved portals under the program.”
During the CGP panel, GSA made clear that, despite Section 846 authorizing the Portals to accommodate purchases up to the SAT ($250k), their intent is to focus the Portals Program on purchases under the Micro-Purchase Threshold (“MPT” – $10k civilian agencies, $5k Department of Defense). Well, that’s kind of its intent. GSA is asking Congress to increase the MPT to $25k only for purchases made through the Portals. Much like the “Portal of Portals” concept, the intent to focus the Portals Program on procurements under the MPT is not documented in GSA’s written Plan, and, reading between the lines, GSA’s approach is interesting for several reasons.

- First, focusing on purchases under the MPT allows the Portals Program to coexist with the Schedules Program. Theoretically, COTS purchases under the MPT would be made through the Portals, while commercial procurements, or COTS procurements above the threshold, could be placed through the Schedules Program. Clearly, this bifurcated approach is the result of Congress charging GSA with implementing a program designed to replace its existing Schedules program, and is a stark deviation from the original intent for the Portals Program (recall, the original Section 801 language did not place any dollar threshold limitation on purchases made through the Portals).

- Second, although GSA is attempting to relegate the Portals Program to lower value procurements under the MPT, increasing the MPT for the Portals alone would ensure the Portals become the preferred procurement vehicle within that niche. Procurements under the MPT are not subject to several key procurement regulations (e.g., competition requirements, the “Rule of Two,” and the BAA/TAA), and the absence of these requirements virtually would ensure all COTS purchases between $10k and $25k are made through the Portals.

- Third, comments made by GSA officials indicate they put at least some thought (but many argue nowhere near enough) into the $25k threshold. They explained they wanted a high-enough threshold to entice Government end-users to procure through the Portals, but not too high as to undermine the goals of the regulations applicable to higher-value procurements. It appears GSA chose $25k as that sweet spot, at least in part, because above that threshold certain free trade agreements would be impacted (most importantly, our NAFTA obligations with Canada). Many questions from conferences attendees, however, strongly suggest industry expects far greater controls for GSS regarding the unintended costs of revising the MPT.

In making these two legislative requests, GSA is offering Congress a compromise: if you let us administer the Portals Program on our terms, then we’ll ensure it becomes the most widely-used and modern COTS procurement vehicle Government-wide. What remains to be seen, however, is if Congress is willing to take that deal. Interestingly, draft legislation circulated by the House Armed Services Committee in mid-April 2018 indicated a willingness to raise the MPT, but did not address GSA’s “Portal of Portals” concept or revise the definition of an “e-commerce portal.” We’ll see if that changes as the draft FY19 NDAA works its way through Congress.

[1] As we’ve written on this blog many times before, Section 846 (or Section 801 as it was known previously) will change the way the Federal Government buys commercially-available-off-the-shelf
(“COTS”) products under the Simplified Acquisition Threshold (“SAT”).

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