



**Dirk Van Dongen**  
*President & CEO*

October 1, 2019

The Hon. Adam Smith, Chairman  
House Armed Services Committee  
U.S. House of Representatives  
Washington, DC 20515

The Hon. James Inhofe, Chairman  
Senate Armed Services Committee  
U.S. Senate  
Washington, DC 20510

The Hon. Mac Thornberry, Ranking Member  
House Armed Services Committee  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Jack Reed, Ranking Member  
Senate Armed Services Committee  
U.S. Senate  
Washington, DC 20510

Dear Chairman Smith, Ranking Member Thornberry, Chairman Inhofe, and Ranking Member Reed:

As you continue to negotiate the National Defense Authorization Act (NDAA) for Fiscal Year 2020, I request on behalf of the National Association of Wholesaler-Distributors (NAW), that you concur in the House Armed Services Committee's direction that GSA test all three e-commerce models and test them concurrently.

NAW is the "national voice of wholesale distribution," an association comprised of employers of all sizes, and national, regional, state and local line-of-trade associations spanning the \$6.1 trillion wholesale distribution industry that employs more than 5.9 million workers in the United States. Approximately 35,000 enterprises with places of business in all 50 states and the District of Columbia are affiliated with NAW.

### **GSA Implementation of Section 846 of the 2018 NDAA**

Section 846 of PL 115-19 established a framework to allow government purchasers to use commercial e-commerce portals to acquire commercial off-the-shelf items (COTS) products. Section 846 charges the GSA with establishing and managing the e-commerce portal program. As introduced, the language of Section 846, the so-called "Amazon Amendment," could be met by only one existing commercial marketplace provider, that being Amazon. Through thoughtful consideration, Congress directed the GSA to go beyond a single marketplace and include multiple commercial e-commerce portal providers in pilot tests to validate their appropriateness as procurement vehicles before final implementation.

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GSA identified three portal provider models: E-Commerce Model; E-Marketplace “Amazon” Model; and E-Procurement Model. GSA stated, “A deep understanding is required of each in order to determine viable alternatives.” However, GSA’s Phase II Report states that the government will pilot only one of the three commercial portal models it developed, the E-Marketplace “Amazon” model. This approach contradicts the language and legislative history of Section 846, artificially narrows competition and will result in a flawed pilot. A five-year pilot period for the single-model risks locking out solutions artificially “back-benched” while GSA’s sole solution is embedded and matured. The barrier to entry for differing solutions will be insurmountable after five-years, resulting in a de facto monopoly.

As the government proceeds with the implementation of the Sec. 846 program, several other issues remain of preeminent concern to NAW members:

- **Analyze and Balance Competing Policies**

The government must balance the need to improve the purchaser’s experience (“ease-of-use”) with ensuring that it has purchasing systems that deliver products in compliance with current requirements for ethics, procurement integrity, and range of choice; explain how “trade-off” determinations (e.g., price v. quality, price v. availability) will be made; and state what it proposes to maintain/eliminate.

- **Portal features**

Supplier access to the portals must be fair and promote competition and choice among vendors. In particular, access of third-party suppliers to the portals and their placement on those platforms to which they are admitted; various antitrust, cyber security and national security concerns; the fees that may be charged by portal providers; and promoting portal specialization based on product category must be addressed with clarity.

- **Proprietary information/transactional data**

FY’18 NDAA Sec. 846(h) limits a portal’s ability to use proprietary information/transactional data derived from third-party suppliers. Portal providers must not be able to use third-party supplier data to gain a competitive edge over those suppliers or to favor one third-party supplier over another. That proprietary information/transactional data of third-party suppliers is protected by clear and enforceable standards is critical to the success of the program.

GSA’s latest Request for Information (RFI) acknowledges the limitation on the use of data by e-marketplace providers set forth in Sec. 838(b)(3) of the FY’19 NDAA. However, NAW remains concerned that the RFI does nothing to explain or provide further information on how these provisions will be enforced in the proof of concept. That proprietary information and transactional data of third-party suppliers will be protected by clear and enforceable standards is critical to the credibility of the program.

- **GSA's Product Choice Presents Real Supply Chain Security Risk**

Section 846 requires GSA, during its market analysis, to assess “the products or product categories that are suitable for purchase on the commercial e-commerce portals...” In stakeholder meetings and reiterated in blog postings, GSA has noted that “health and IT products have unique supply chain requirements and warrant special consideration.”

Contrary to Section 846's direction, GSA does not address in the Phase II report those product categories not suitable for its e-marketplace platform, it only conveys “it does not intend to start with specialized marketplaces” for IT or medical devices. And, in a public forum earlier this year, GSA representatives stated that IT/medical devices could be sold in the pilot if such items were offered for sale in the e-marketplace. GSA's equivocating and conflicting positions ignores its own finding - “there are real concerns focused primarily around supply chain security” as to health care and IT products.

Counterfeit and grey market IT products, from software to equipment, can cripple agency systems; they are the entry way to those with malicious intent to harm the United States. Federal IT providers adhere to rigorous standards to reduce this risk. Healthcare products serve individuals the federal government cares for; agencies with this mission impose heightened supply chain standards. These standards, as to both IT and healthcare, are not replicated in the e-marketplace. GSA's equivocation increases risk; IT and healthcare products should not be part of the pilot.

We look forward to continuing to work with you and Congress as you finalize the National Defense Authorization Act (NDAA) for Fiscal Year 2020 and I again request that you concur in the House Armed Services Committee's direction that GSA test all three e-commerce models and test them concurrently.

Sincerely,



Dirk Van Dongen  
President & CEO

*cc: Members of the House-Senate NDAA Conference Committee*