

Stockton Hall 417  
2000 H Street NW  
Washington, D.C. 20052  
Email: [cyukins@law.gwu.edu](mailto:cyukins@law.gwu.edu)

---

January 20, 2020

Timothy Bowling  
Chief Quality Officer  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548  
Email: [recordsrequest@gao.gov](mailto:recordsrequest@gao.gov)

Re: Request for Electronic Records of Redacted Pleadings in  
*Overstock.com, Inc.*, Comp. Gen. B-418414

Dear Mr. Bowling:

Pursuant to the Government Accountability Office (GAO) rules on the public availability of records, 4 Code of Federal Regulations (CFR) Part 81, this is to respectfully request electronic versions of the redacted materials filed in the referenced pending bid protest. I am a professor of government procurement law at the George Washington University Law School, and as is discussed below I request these records so that information and analysis regarding the subject procurement – a multi-billion dollar procurement to open commercial electronic marketplaces to federal users – can be made available to the public.

**I. Documents Sought – Expedited Production Requested**

The GAO bid protest [docket information](#) regarding the pending protest is as follows:

Protestor: Overstock.com, Inc.  
Solicitation Number: 47QSCC20R0001  
Agency: General Services Administration: Federal Acquisition Service  
File Number: B-418414.1 Outcome: Not Decided Status: Case Currently Open  
Filed Date: Jan 15, 2020  
Due Date: Apr 24, 2020  
Case Type: Bid Protest  
GAO Attorney: Glenn G. Wolcott

Expedited production is requested under this statement, certified by me to be true and correct to the best of my knowledge and belief, that the records are needed urgently because I am a person primarily engaged in disseminating information, and that I seek to inform the public concerning federal government activity. *See* 4 CFR § 81.3.

## II. Public Importance of Requested Documents

The solicitation at issue, referenced above, involves a multi-billion-dollar procurement by the U.S. General Services Administration (GSA) to open commercial electronic marketplaces to federal users. [Much](#) has been [written](#) on this [GSA procurement initiative](#), both here and abroad, the initiative will be the topic of a forthcoming Thomson Reuters *Briefing Paper*, and it is a continuing focus of public discussions, for example in [industry](#), in the [public procurement law bar](#), at international [symposia](#), and at the March 2020 Thomson Reuters Government Contracts Year in Review in Washington, D.C.

The protest of this solicitation is especially important because, outside the procurement itself, there has been little resolution of the legal issues that surround this major shift in federal policy. [Congress called for GSA](#) to open electronic portals to users, and [GSA received](#) public comments (including on a [draft solicitation](#)), but there was no rule-making process despite the substantial impact that this procurement may have on federal procurement.

The new marketplaces are estimated by GSA to cover potentially \$6 billion in micro-purchases (generally up to \$10,000, although GSA [seeks](#) to increase that threshold to \$25,000 for GSA-approved marketplaces). Among other things, the new electronic marketplaces may:

- Reduce bid protests (it will be difficult to challenge government users' rapid, largely non-transparent purchases online);
- Radically reshape procurement markets (for example, although the GSA solicitation was for goods only, major electronic marketplaces also can host sales of services – the cornerstone to the modern federal procurement market);
- Cause a sharp increase in debarments (perhaps the only way to protect governments from their own users purchasing online);
- Spread internationally, as centralized purchasing agencies may take notice of the substantial referral fees GSA will earn from the commercial marketplaces; and,
- Affect the value of trade agreements (without bid protests, free trade agreements that cover public procurement are very difficult to enforce).

Transparency is also important because the procurement is, in practical terms, not visible to the public at this critical juncture. GSA did not publish a solicitation amendment which apparently created a new due date (January 15) for submission of proposals. *See* Daniel Seiden, *Overstock.com Protests GSA's e-Marketplace Solicitation*, Bloomberg Law News, Jan. 17, 2020 (proprietary publication). The solicitation [published online](#) stops with the original proposal due date, November 15, and so unless the redacted protest materials are released publicly (I intend to republish them on my blog, [www.publicprocurementinternational.com](http://www.publicprocurementinternational.com), with explanatory comments), the public will have no way to monitor critical developments in this internationally important procurement involving billions of taxpayer dollars.

### **III. Requested Documents Are Appropriately Subject to Release by GAO**

As GAO explains in its implementing [guidance](#), GAO's bid protest regulations, 4 CFR § 21.4, require that redacted versions of every pleading, including the protest itself, be filed promptly with GAO. Redacted versions of the protest pleadings are thus readily available. Per GAO's public disclosure rules, 4 CFR § 81.7, there should be no chargeable costs for reproducing redacted materials because any redacted bid protest materials are already stored in electronic form on GAO's Electronic Protest Data System (EPDS) (an electronic docket which is closed to public access). Because the redaction process deletes any confidential or proprietary information in the pleadings, *see, e.g.*, GAO, [Guide to Protective Orders](#), at 4 (10<sup>th</sup> ed. rev., June 2019), and the protest file is publicly available to other competitors, *see* Federal Acquisition Regulation (FAR) 33.104(a)(3)(ii), 48 CFR § 33.104(a)(3)(ii), the protest records are not exempt from disclosure under 4 CFR § 81.6, and the records properly can be produced under GAO's regulations.

Thank you for your attention to this request, and please feel free to contact me with any questions at [c yukins@law.gwu.edu](mailto:c yukins@law.gwu.edu).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Yukins', with a long horizontal flourish extending to the right.

Christopher R. Yukins