

# Webinar – Opening Online Marketplaces to Government Micro Purchases

Tuesday, June 30, 2020

9:00 Pacific, 12:00 Eastern, 18:00  
CET

Info: [www.publicprocurementinternational.com](http://www.publicprocurementinternational.com)

GW

LAW

CONTRACTS AWARDED



# Agenda



Introductions



Panelists



Questions & Answers  
(note: please use chat  
function for questions  
during the session)

# THE GOVERNMENT CONTRACTOR

Information and Analysis on Legal Aspects of Procurement

Vol. 61, No. 38

October 16, 2019

purchases from online commu-  
every year.

## Focus

¶ 303

**FEATURE COMMENT: U.S. Government To Award Billions Of Dollars In Contracts To Open Electronic Marketplaces To Government Customers—Though Serious Questions Remain**

The initial legislation promul-  
small businesses that feared  
large electronic marketplaces. (with § 838 of the NDAA for FY19)  
which bars misuse of sales; it  
electronic marketplaces, and—  
has been no new regulatory e-  
billions of dollars in purchases

## GSA Commercial Platforms Initiative

home content members group search

### GSA Awards Contracts to Commercial E-Marketplace Platform Providers

Submitted by Comm1 Platform on Friday, June 26, 2020 - 1:59 PM

GSA has awarded contracts to three e-marketplace platform providers as part of implementation efforts for the Commercial Platforms program and Section 846 of the 2018 National Defense Authorization Act. Awarding these no-cost contracts to Amazon Business, Fisher Scientific, and Overstock.com, Inc. allows GSA to test the use of commercial e-commerce portals for purchases below the micro-purchase threshold of \$10,000 using a proof-of-concept (for up to three years).

These contracts and platforms will be available to federal agencies as part of a governmentwide effort to modernize the buying experience for agencies and help them gain insights into open-market online spend occurring outside of existing contracts. It is estimated that open market purchases on government purchase cards represent an addressable market of \$6 billion annually.

The goal of the proof of concept is to provide a modern buying solution for federal customers and increase transparency on agency spending that's already taking place with better data through this solution. Further, this solution leverages the government's buying power and increases supply chain security awareness with a governmentwide approach. According to GSA Federal Acquisition Service Commissioner Julie Dunne, the proof-of-concept will start small and be refined through repeated testing. GSA will continue to solicit stakeholder feedback as has been the case throughout the program's development.

GSA anticipates the e-marketplace platforms will be available for use in the next 30 days. For updates on availability of the proof of concept, please continue to follow the Commercial Platforms Interact group.

For the full press release, please click [here](#).



## Combating Trafficking in Counterfeit and Pirated Goods

Report to the President of the United States

January 24, 2020



Homeland Security

Office of Strategy, Policy & Plans

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# THE GOVERNMENT CONTRACTOR

Information and Analysis on Legal Aspects of Procurement

Vol. 62, No. 24

June 24, 2020

## Focus

¶ 172

**FEATURE COMMENT: Emerging From The Pandemic: U.S. Government Poised To Award Commercial Platforms Contracts That Will Open Online Marketplaces To Federal Purchasers**

The General Services Administration is poised to award contracts to commercial companies that host "electronic marketplaces" online to allow such as Amazon.com and Walmart.com. The "commercial platforms" initiative could radically reshape Government procurement in goods and services, as federal users will be able to make direct "micro-purchases" (typically up to \$10,000) directly from these commercial platforms.

In the authors of this piece will discuss during a live June 30, 2020 webinar webinar (see [www.purchasing.com/contractors/conferences](http://www.purchasing.com/contractors/conferences) for details), although the GSA initiative is both important and highly innovative, it raises a number of challenges as well.

The introductory portion of this article, prepared by Professor Christopher Yukins of George Washington University Law School's Government Procurement Program, introduces GSA's "commercial platforms" initiative, which may be the first major effort by an industrialized nation to open online commercial marketplaces for purchases by government users. Professor Robert Handfield, author of the portion of this article that addresses supply chain resilience, is the Frank B. Rowland University Distinguished Professor of Supply Chain Management at North Carolina State University, and Director of the Supply Chain Resilience Center. Trump's Buy American Order and the New Electronic Marketplaces, 8 Pub. Fin. L. Rev. 343 (2018).

Congress called for action in part because of the dramatic rise in Amazon and other online vendor play in the commercial marketplace; Congress did not want the Government to be left behind, especially since Government studies have shown that federal buyers already use Government-owned purchase cards to make hundreds of millions of dollars in micro-purchases from online commercial marketplaces every year.

Micro-purchases are normally capped at \$10,000, but that limit has risen to \$10,000 in

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# Resources: publicprocurementinternational.com

Robert Handfield (NCSU)



Thomas Kull (ASU)



Andrea Patrucco (PSU)



Christopher Yukins (GW)



**Roger Waldron**  
Coalition for Government  
Procurement

# Panelists and Special Guest

# Christopher Yukins

## George Washington University

- Initiative launched by Congress – to allow government users to purchase directly online (Sec. 846/[NDAA-FY18](#), Pub. L. 115-91)
- GSA opted to focus on “commercial platforms” (GSA “Phase II” [report](#), April 2019). Section 846 authorized to Simplified Acquisition Threshold (\$250,000), but GSA limited to micro-purchases (up to \$10,000)
- Congress said portal must agree not to use information “related to a product from a third-party supplier featured on the commercial e-commerce portal or the transaction of such product” for commercial purposes (Sec. 838/[NDAA-FY19](#), Pub. L. 115-232, RFP C.8)
- Three contracts awarded on June 26: **Amazon Business, Overstock.com and Fisher Scientific** (GSA Comm. Platforms – Interact page, 6/26/20)
- “Proof-of-concept” for three years, with possible open season (GSA Solicitation (Sol.) [47QSCC20R0001](#) on beta.sam.gov, RFP C.5 & C.6). **Platforms launch in 30 days** (GSA 6/26/20 press release)
- **Both goods and services** (Q&A 1/10/20) – but see Att. 5 (draft user guide, as amended) barring services
- GSA expects spend data will “help with compliance in areas like AbilityOne, small business, and supply chain risk management” (GSA 6/26/20 press release). Within 120 days, platforms must address AbilityOne and other mandatory sources, FAR 8.002 (Amended RFP & Statement of Objectives).
- Offers could be vetted by Federal Acquisition Security Council for cybersecurity concerns (GSA Sol.-cover letter)
- Estimated **\$6 billion marketplace** (of \$500 billion annual U.S. procurement)



# Robert Handfield

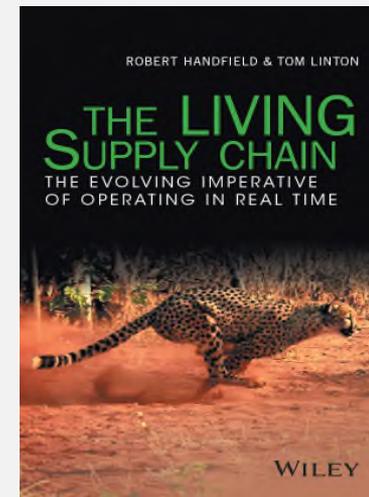
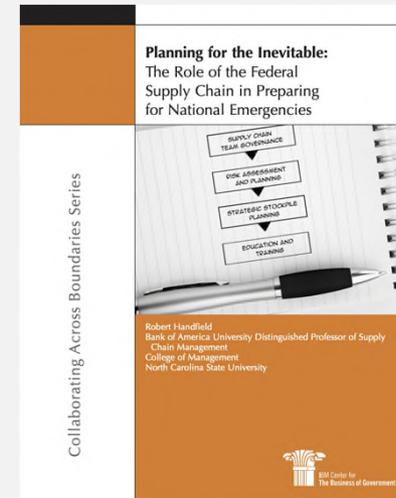
## North Carolina State University



- Supply chain immunity is needed to respond to pandemic events
- Transparency between suppliers and customers is needed for agile responses
- Resilience also requires visibility of demand and supply disruptions
- Avoiding “the tragedy of the commons” is a function of strong centralized planning
- Past performance is key to establishing trusted sources of supply



<https://www.neweconomyforum.com/news/supply-chain-resilience-part-1/>



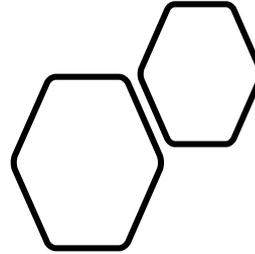
# Thomas Kull

## Arizona State University



- 
- User knowledge is key to success of electronic platforms
  - Federal Acquisition Regulation (FAR 13.201) requires user training
  - Purchasers must:
    - Ascertain user needs
    - Research product capabilities
    - Gather purchase alternatives
    - Follow up with users to assure satisfaction
    - Use tools for analysis – reviewing trends and possible improvement
    - Remain pro-active in ensuring purchases further organization's mission
  - Training demands **assessment** and **development**
    - Assess existing learning platforms for micro-buyers
    - Develop micro-learning and online learning mechanisms
  - Agencies' preparation will take time

# Andrea Patrucco PSU/Florida International University



- GSA opted for “commercial platforms” -- not to enhance its own platform
- Opportunity: centralize supply and spend, and improve data collection and spend analysis
- U.S. states may adopt similar strategies, building on government-built e-procurement platforms
- Local governments less likely
  - Not simply “digitalization of the procurement process”
  - What is the real value of the technology?
- Real challenges for European implementation
  - E-marketplace opportunities challenged during COVID-19

# Opening Online Marketplaces to Government Micro- Purchases



*Common Sense*

**THE COALITION**  
*for Government Procurement*



# Questions for e-Commerce

- Limiting the scope of e-commerce platforms
- Fair and reasonable pricing?
- Country of Origin
- Organizational Conflict of Interest, Gate-keeping, Market Integrity
- DHS Report on e-Commerce, Executive Order
- Dual Procurement Universes

# Questions for e-Commerce, con't

- Other Government requirements – AbilityOne?
- Supply chain issues like counterfeit products, Kaspersky, and Huawei
- Post-facto forensics
- Ownership and use of transactional data
- Intellectual Property/Platform Provider Accountability
- Metrics, how is success measured?

**Roger Waldron**

President

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202-331-0975

[Additional resources on e-Commerce](#)

# Audience Questions

# Audience Question

A thick yellow horizontal bar spans the width of the slide, with a vertical yellow bar on the right side that extends from the top of the horizontal bar down to the middle of the slide.

- Why is this initiative important, if government users may already use government purchase cards to buy from online commercial platforms such as Amazon?

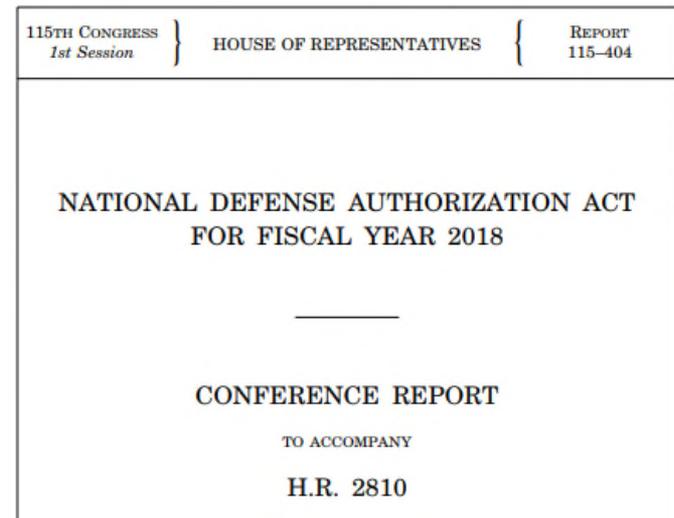
# Audience Question

- In the conference report for the 2017 NDAA, Congress identified healthcare and IT as two industries that may be ill-suited for this type of purchasing model. From a healthcare perspective, COVID-19 has brought to light how easy it can be to price-gouge legitimate products, or to come to market with counterfeit products when working outside of the established, commercial healthcare distribution chain. **In an industry where lives are on the line, how would you propose ensuring that the healthcare supply chain remain secure and legitimate in this type of marketplace?**

*(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.*



# Background on Supply Chain Integrity

- “E-commerce platforms represent ideal storefronts for counterfeits...and provide powerful platform[s] for counterfeiters and pirates to engage large numbers of potential consumers.”
  - Organisation for Economic Cooperation and Development

| Immediate Actions by DHS and Recommendations for the U.S. Government                   |
|--|
| 1. Ensure Entities with Financial Interests in Imports Bear Responsibility             |
| 2. Increase Scrutiny of Section 321 Environment  |
| 3. Suspend and Debar Repeat Offenders; Act Against Non-Compliant International Posts   |
| 4. Apply Civil Fines, Penalties and Injunctive Actions for Violative Imported Products |
| 5. Leverage Advance Electronic Data for Mail Mode                                      |
| 6. Anti-Counterfeiting Consortium to Identify Online Nefarious Actors (ACTION) Plan    |
| 7. Analyze Enforcement Resources   |
| 8. Create Modernized E-Commerce Enforcement Framework                                  |
| 9. Assess Contributory Trademark Infringement Liability for Platforms                  |
| 10. Re-Examine the Legal Framework Surrounding Non-Resident Importers                  |
| 11. Establish a National Consumer Awareness Campaign                                   |



## Combating Trafficking in Counterfeit and Pirated Goods

Report to the President of the United States

January 24, 2020

# Audience Question

- As the marketplace establishes commerce between distributor and the government (not the marketplace as the seller) **is a seller with a Multiple Award Schedule Contract required to abide by the terms and conditions of its MAS or is the transaction designated as open market by virtue of it being under the micro purchase threshold?** GSA goes to great lengths to maintain the latter as the answer for portal transactions. However, that is inconsistent with the way MAS contract holders conduct business today where 95% of transactions are under the micro purchase threshold. Further, GSA schedule administrators maintain that all transactions conducted on the federal procurement card to be a “contract sale”.

# GSA Response Regarding Relationship to Multiple Award Schedule Contracts

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- Offeror question: “Is it safe to assume that this new procurement/ Commercial e-Marketplace Acquisition is the same as GSA schedule contracts but on a GPC [Government Purchase Card] only level. Or please expand on the difference?”
- GSA Answer: “No, this is a separate procurement and not affiliated with the GSA Schedules program. The Commercial Platforms initiative is not intended to replace existing government purchasing channels. The ordering guidance issued as part of the solicitation for implementation of the initial proof of concept emphasizes and addresses relevant sources of supply to minimize impact on existing acquisition programs.”

# Conclusion

Materials and a recording of this program  
will be posted on  
[www.publicprocurementinternational.com](http://www.publicprocurementinternational.com)