**Buyer Incentives and Administrative Burdens in the Commercial Platforms Initiative[[1]](#footnote-1)**

**By**

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Professor Christopher Yukins and his colleagues present a persuasive case for the benefits of adopting commercial platforms in government procurement.[[3]](#footnote-3) Analyzing the General Services Administration’s (GSA) Commercial Platforms Initiative (CPI), Yukins concludes that the initiative will help solve the agency problem,[[4]](#footnote-4) enhance end-user satisfaction, increase value, and make better use of an overburdened acquisition workforce.[[5]](#footnote-5) While these achievements would certainly improve efficiency and reduce prices, GSA may have gone a step too far by devolving buying authority down to end-users.[[6]](#footnote-6) In partial rebuttal of Professor Yukins’s conclusions, I will address the impact such a change may have on best value determinations and the related administrative burdens of oversight and management of the program. The CPI, as currently implemented, may in fact reduce overall value while increasing the risk of waste and the administrative burdens on agencies.

GSA went well beyond its statutory mandate[[7]](#footnote-7) by requiring that buying power under the program be shifted from contracting officials to agency end-users, thereby reducing the agency problem and increasing user satisfaction by making agents and end-users one and the same. However, this benefit is premised on the assumption that end-users are capable of making, and incentivized to make, appropriate best value determinations. Yukins *et. al* devote only a parenthetical to the assumption that end-users will necessarily make purchases based on a determination of best value.[[8]](#footnote-8) The distinction between best value to the government and best value to the buyer takes on significance when assessing the program’s ability to achieve its goals. In many cases, there could be a significant disconnect between a best value outcome for the government as a whole and the best value outcome for the individual user.

In a separate work, co-author Abraham Young illustrates the divide between procurement officials and end-users with the example of a young U.S. Army soldier purchasing combat boots from a commercial e-commerce platform with personal funds.[[9]](#footnote-9) Because the contracting official who purchased the boots does not have an effective feedback mechanism with which to assess the soldier’s satisfaction, the government-procured boots that were issued to the soldier are not satisfactory for their intended purposes. As a result, the soldier uses her own money to purchase commercially available boots that better meet her needs, while the government-procured boots sit unused as an ultimately wasteful purchase. The CPI’s solution is to remove the procurement official from the equation.

While this approach will likely enhance the soldier’s satisfaction with the government-purchased boots, it does not necessarily flow that such an outcome will represent the best value to the government. Unlike procurement officials, young soldiers or other agency end-users are not well trained or conditioned to analyze acquisitions in the context of good stewardship of public funds or protection of the public fisc. Empowering end-users to make purchasing decisions using someone else’s money will, in fact, reduce the incentives to maximize value and spend responsibly that are intrinsic to personal expenditures. Instead, end-users are likely to regularly choose more expensive options under the belief, however flawed, that higher price represents higher quality.

Taking the boots example a step further, the soldier may elect to purchase boots because they are lighter and more comfortable. The purchase represents the best value at the price for the soldier’s perceived needs. However, those boots may not be as durable as another option and will have to be replaced more often. Buying the lighter boots more frequently will result in an overall greater expense to the government over time for a product that is inferior in overall quality. Even assuming the end-user makes a less expensive purchase in the interest of fiscal responsibility, the overall cost to the government is greater, and value lower, since more frequent purchases will result in higher overall costs and waste. Choosing more durable boots, even if a less attractive option to the soldier, results in less frequent purchases that reduce overall cost to the government. Disinterested procurement officials are, by nature and training, better suited to evaluate this overall value determination than end-users precisely because they see a greater breadth and depth of acquisitions.

To combat this problem and better ensure end-users properly evaluate best value and avoid wasteful spending, agencies will have to implement or enhance oversight and management systems for CPI procurements. Thus, the perceived benefit of relieving the acquisition workforce of oversight and management of smaller purchases made under CPI really only shifts that burden to agencies that are less qualified or resourced to meet it. Since CPI purchases are limited to the micro-purchase threshold and intended to be made using existing Government Purchase Card (GPC) programs,[[10]](#footnote-10) one solution might be to limit CPI access to existing GPC holders. However, assuming the intent is not to issue GPCs to every end user, that approach forfeits the CPI goal of marrying the agent and end-user into the same person. Instead, the agency problem shifts to the individual agency GPC holders. While agency GPC holders may be closer to end-users than procurement officials, thereby reducing the feedback gap, the satisfaction problem still remains, especially considering the potential size and scope of the organization for which a GPC holder may be responsible.

Alternatively, GPC holders may be required to review and approve end-user purchases before they are finalized. Using a central billing model, end-users could be authorized to place purchase requests directly on the e-commerce platform that must then be approved by GPC holders before the order is filled. While this approach still allows the end users to make purchases that directly meet their needs, it increases the management and oversight responsibilities, and associated costs, of the GPC holders. Indeed, it effectively shifts the oversight and management burdens that CPI seeks to remove from procurement officials to GPC holders that are not trained or resourced to meet them.

Thus, while CPI is a promising attempt to reduce the agency problem, enhance user satisfaction, increase efficiency, and reduce cost, it is not without risk. By shifting buying authority to end-users who are ill-suited to evaluate best value for the government, CPI risks overall decreases in value for money and increases in the risk of waste. To combat this, additional time, manpower, and resources will be necessary to establish or enhance management and oversight mechanisms at the agencies to ensure end-users are indeed making best value purchases. As a result, rather than eliminating these administrative costs, CPI simply shifts them from procurement officials to agencies.

1. This paper was prepared in partial completion of the requirements for an LL.M. in Government Procurement Law from The George Washington University Law School. [↑](#footnote-ref-1)
2. Michael R. Tregle, Jr. is a Judge Advocate in the United States Army. All views expressed are those of the author and do not reflect the official policy or position of the United States Army, the United States Department of Defense, or the United States Government. [↑](#footnote-ref-2)
3. *See generally* Christopher Yukins, Abraham Young, Kristen Ittig, & Eric Valle, *GSA’s Commercial Marketplaces Initiative: Opening Amazon & Other Private Marketplaces to Direct Purchases by Government Users*, 20-13 Briefing Papers 1, 2 (2020). [↑](#footnote-ref-3)
4. *Id*. The “agency problem” refers to the phenomenon wherein agents frequently fail to realize the principal’s best procurement outcomes due to competing interests, and differing incentives, between the principal and agent. *Id.* [↑](#footnote-ref-4)
5. *Id.* at 1-2. [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 846, 131 Stat. 1283, 1483 (2017). [↑](#footnote-ref-7)
8. *Id.* at 3 (“...end-users (who are personally incentivized to achieve value for money)...”). [↑](#footnote-ref-8)
9. Abraham Latimer Young, *Empowering the End-User as Procurement Agent Through E-Commerce*, 49 Public Contract L. Journal 4 (2020), https://www.americanbar.org/groups/public\_contract\_law/publications/public\_contract\_law\_jrnl/49-4/e-commerce/. [↑](#footnote-ref-9)
10. Yukins, *supra* note 3, at 1. [↑](#footnote-ref-10)