



**Dirk Van Dongen**  
*President*

April 20, 2018

The Honorable Donald Trump  
President of the United States  
The White House  
Washington, DC 20500

Dear Mr. President:

On behalf of the National Association of Wholesaler-Distributors (NAW), I write to ask that you review the General Services Administration's (GSA) plan to increase purchases of foreign products. Unless reversed, the U.S. government will likely buy more foreign products to the detriment of American workers. At the same time, it will strengthen the already dominant online platform provider.

NAW is the "national voice of wholesale distribution," an association of employers of all sizes and national, regional, state and local line-of-trade associations spanning the \$5.7 trillion wholesale distribution industry employing more than 5.9 million workers in the United States. Approximately 30,000 enterprises of all sizes, in every product line and with places of business in all 50 states and the District of Columbia are affiliated with NAW, many of which supply commercial products to departments and agencies of the U.S. government.

GSA has presented a plan to implement Section 846 of the National Defense Authorization Act for Fiscal Year 2018. Section 846, the so-called "Amazon Amendment," directs GSA to establish a program for federal agencies to buy commercial products through commercial e-commerce portals.

In its plan, GSA proposes that Congress raise the micro-purchase ceiling. Currently at \$10,000 for civilian agencies and \$5,000 for the Defense Department, agencies may buy products below that ceiling without competitive quotations if the price is reasonable. Micro-purchases are exempt from the Buy American Act, the Trade Agreements Act and other obligations. Purchases above the micro-purchase level are subject to a rigorous compliance regime imposed on vendors selling goods and services to the government. GSA has asked Congress to raise the micro-purchase ceiling to \$25,000 for purchases through the Section 846 e-commerce portal.

The proposal confounds Executive Order 13788, *Buy American and Hire American* (April 18, 2017). Instead of fostering the purchase of U.S. goods and products by government agencies, it circumvents and dilutes your Executive Order's commitment. By more than doubling the micro-purchase ceiling, it will expand enormously the foreign products purchased by the government. Its breadth collapses the compliance structure mandated by the Buy American Act and your Executive Order.

By overlooking the Buy American Act, the plan enhances immeasurably the dominant online platform provider, which makes no investment to conform to the Buy American Act. Delineating products that comport with the law and rules, which GSA now appears to abandon, is costly. That foreign products will pervade accrues directly to the dominant e-commerce portal provider, giving it substantial leverage over both suppliers selling products on the platform and agency purchasers.

**NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS**

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*April 20, 2018*

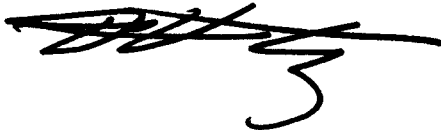
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Section 846 fundamentally restructures the way the federal government acquires commercial products. NAW agrees with what we understand to be Section 846's purpose: to improve the commercial product acquisition process. We have conveyed to the Congress and to GSA that only meaningful competition at platform and supplier levels will afford fair opportunities to participate and give federal agencies broad choices at competitive pricing. GSA's jettisoning Buy American Act obligations is wrong.

Moreover, the momentum implementing Section. 846 is toward the "Amazon Amendment" model and is to the detriment of countless private sector stakeholders, the federal government and taxpayers. It will generate potentially several billions of dollars annually in fees to what will at best be an extremely limited number of commercial e-commerce portal providers. The disparate, specialized and unique requirements of many federal agencies will be compromised. No serious cost-benefit analysis has been conducted nor appears contemplated.

For the reasons set forth in the attached letter to Members of the United States Senate and House of Representatives, NAW urges that GSA's proposal to increase the micro-purchase ceiling be withdrawn and that its overall plan be reconsidered.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dirk Van Dongen', with a stylized flourish at the end.

Dirk Van Dongen  
President

Attachment



**Dirk Van Dongen**

*President*

April 17, 2018

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

The Hon. Trey Gowdy, Chairman  
Committee on Oversight & Government  
Reform  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Steve Chabot, Chairman  
Committee on Small Business  
U.S. House of Representatives  
Washington, DC 20515

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

The Hon. Elijah Cummings, Ranking Member  
Committee on Oversight & Government  
Reform  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Nydia Velázquez, Ranking Member  
Committee on Small Business  
U.S. House of Representatives  
Washington, DC 20515

The Hon. John McCain, Chairman  
Committee on Armed Services  
U.S. Senate  
Washington, DC 20510

The Hon. Ron Johnson, Chairman  
Committee on Homeland Security &  
Governmental Affairs  
U.S. Senate  
Washington, DC 20510

The Hon. Jim Risch, Chairman  
Committee on Small Business &  
Entrepreneurship  
U.S. Senate  
Washington, DC 20510

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

The Hon. Claire McCaskill, Ranking Member  
Committee on Homeland Security &  
Governmental Affairs  
U.S. Senate  
Washington, DC 20510

The Hon. Ben Cardin, Ranking Member  
Committee on Small Business &  
Entrepreneurship  
U.S. Senate  
Washington, DC 20510

Pending before the Committees is the General Services Administration's (GSA) initial implementation report addressing Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (FY '18 NDAA) (PL 115-91). Section 846 directs GSA "to establish a program to procure commercial products through commercial e-commerce portals ... through multiple contracts with multiple commercial e-commerce portal providers ..." The report includes GSA's recommendation to amend the law to assist its implementation.

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I write on behalf of the National Association of Wholesaler-Distributors (NAW) to express our concerns with regard to the substance of the report and to encourage more meaningful public participation. Absent detailed hearings, debate and deliberation as to how specific proposals will promote competitive markets and historic compliance and policy values, Section 846 will fail in its worthy objective to improve how the government buys commercial goods.

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 \$5.7 trillion wholesale distribution industry that employs more than 5.9 million workers in the United States. Approximately 30,000 enterprises of all sizes, in every product line and with places of business in all 50 states and the District of Columbia are affiliated with NAW, many of which supply commercial products to departments and agencies of the U.S. government.

Some major concerns expressed by NAW members are outlined below and further detailed in the body of this letter.

- GSA’s recommended increase in the micro-purchase threshold to \$25,000 for e-commerce commercial portal purchases will elevate the potential for waste, fraud and abuse, and significantly broaden exemptions from many regulatory, compliance, competition, and acquisition policy obligations.
- Commercial portal purchasing will increase the risk of counterfeit and lower quality products.
- GSA’s Phase I report to Congress includes no analysis to support many of the agency’s recommendations, resulting in stated benefits based solely on GSA assumptions.
- The commercial portal initiative is moving forward without sufficient input from federal agencies, COTS industries and other stakeholders.
- GSA’s Phase I report does not provide any method for determining fair and reasonable pricing for portal purchasing nor does it reference it as a challenge to be addressed.
- GSA vagueness as to how its current thousands of COTS Multiple-Award Schedule (MAS) contract vendors will participate in the e-commerce portal program undermines interest and investment in supplying the government.
- GSA is not clear as to how portal customer information and data and third party supplier transactional data will be protected, secured from third parties and managed by portal providers, a major premise of Section 846.

NAW reiterates our agreement with what we understand to be Section 846’s fundamental purpose: to improve the efficiency of the commercial off the shelf (COTS) acquisition process. We conveyed to the Congress during its consideration of Section 846, and to GSA in January 2018, that only meaningful competition at both the platform and supplier levels will afford stakeholders fair opportunities to participate and give federal agencies a range of choices at competitive pricing. Our member companies are very concerned that the implementation plan and the legislative recommendations will weaken the competitive process of and transparency into government purchasing.

Following enactment of Section 846, GSA convened a public meeting, invited comment, met with stakeholders and engaged agency customers. Yet there is a real difference between inviting comments generally and presenting specific proposals and soliciting positions and deliberation. GSA's legislative proposals would have benefitted from debate and discussion with agency customers and the public. While understandable in the short time since Section 846's enactment, there is no indication GSA intends a comprehensive exchange. NAW urges the Committees to hold hearings on the substance of GSA's legislative proposals, its Phase 2 plans and how GSA can best provide opportunity for the public and agencies to participate in the Section 846 implementation process.

### **The Report's Legislative Proposals**

NAW believes that GSA's proposed amendments to law present significant challenges. There is neither clarity nor detail as to how the proposals reflect the law's mandate that the acquisition of commercial products via e-commerce portals be "through multiple contracts with multiple commercial e-commerce portal providers..."

- GSA proposes to raise the micro-purchase threshold. First enacted in 1994, the law allows purchases of goods without obtaining competitive quotations if the price is reasonable. Micro-purchases are also exempt from most compliance and policy obligations, including the Buy American Act ("BAA") and the Trade Agreements Act ("TAA"). The law's objective is to assist agencies in buying products and services efficiently by reducing the significant administrative costs associated with small or "micro" purchases. The current micro-purchase ceiling is \$10,000 for civilian agencies and \$5,000 for the Department of Defense. GSA asks Congress to raise the ceiling for all agencies to \$25,000 for portal purchases.

GSA's proposal indicates a decision that some notion of efficiency prevails over considered and long-standing compliance and policy obligations. No analysis accompanies the recommendation to jettison long established procurement integrity and policy obligations. There is no indication how much agencies will spend or how spending will be tracked and accounted for. There is an allure of on-line marketplaces based on convenience, yet there is real risk to mission quality by elevating convenience over outcomes. This the proposal marginalizes if not ignores.

A competitive market can delineate values to provide choice. The balance GSA purports to weigh as to compliance generally, the BAA, the TAA, Federal Prison Industries, Javits-Wagner-O'Day and other policy obligations against convenience lacks even nominal analysis. Without study and deliberation, enactment will create two channels, one with obligations that carry additional costs, the other with none. The reality is that investment in channels providing additional value will be lost and with such, agency choice.

A more meaningful approach is seeking agency and public discussion as to how more than doubling the micro-purchase threshold contributes to a competitive environment affording agencies choice while streamlining processes. Agencies and the public, informed by experience, suppliers and actual data, can bring clarity to the values associated with mission requirements.

- The Competition in Contracting Act (CICA) requires agencies to obtain full and open competition through competitive procedures. CICA is the foundation of current procurement requirements. A range of procedures and methodologies flow from CICA – sealed bids, competitive proposals, other competitive processes and pricing analysis. It has been amended to promote efficiency and other benefits. Section 846 reflects a core objective to simplify commercial purchases via commercial e-commerce offerings while preserving competition.

GSA asks that the law be amended authorizing it to define and determine practices indicating competition in e-commerce portals. With this authority comes the ability to choose the terms under which such portals will operate, with the GSA already favoring the e-commerce portal's own commercial terms. The GSA has not sought out recommendations for what those terms ought to include nor has it requested sample terms from any of our member companies which currently sell to the government. Without these details the government cannot be sure exactly what it would be signing up for and whether such terms contain legally impermissible provisions for the government.

GSA's aim to update indicia of a competitive market is well-grounded yet its path unclear. Its proposal lacks any detail to discern how it will yield market-like results. The premise of dynamic pricing that dominates marketplace portals is well known. Adjusting pricing based on market conditions is enabled by faster access to and analysis of the market, and purports to reflect competition. Section 846(d) demands much more; agency program objectives and current policies must be addressed. Yet, GSA is silent.

The challenge of any methodology is to provide agencies metrics and data analytics as to both price and mission critical values. Inventory availability, product specifications, warranty, delivery date estimates, expedited delivery options and return policy are vital criteria entering the federal customer's purchase decision. By failing to address the criteria needed to be examined, the amendment falls short of promoting a competitive market able to promote broad choice and opportunity. GSA's lack of criteria also masks the question whether legacy methodologies determining price reasonableness, still in place and criticized as complex, burdensome, and unnecessary and not reflective of commercial markets, will endure.

- GSA also asks for authority to integrate its Multiple Awards Schedule (MAS Schedule) program into Section 846's e-commerce model. MAS Schedule contracts are indefinite delivery, indefinite quantity (IDIQ) long term agreements that provide reasonable pricing and a range of value elements. The contracts contain pre-negotiation prices, delivery terms, warranties, and other terms streamlining an agency's buying process. The MAS Schedule program affords agencies flexibility and a meaningful alternative to separate solicitations and awards.

In implementing Section 846, GSA states it anticipates a direct relationship with commercial e-commerce portal providers. GSA seems to suggest that suppliers holding MAS Schedule contracts will also participate in the Section 846 portal. While it is not clear how MAS Schedule holders will do so, GSA seeks authority to consider the option.

Whether the MAS Schedule program can be integrated into Section 846 is a worthwhile inquiry. It entails quantitative review as to the costs associated with the portal provider, the product provider and whether agency mission requirements can effectively be met. Ultimately it engages the viability of the MAS Schedule program. Prior to considering the proposal, details as to its objectives and how it furthers Section 846 competitive goals, including serious cost-benefit scrutiny, are essential.

- GSA's proposal to expand the definition of "commercial e-commerce portal" to implement the "E-Procurement Model" also requires clarity. This recommendation appears based on providing a line of sight to competing offers, a positive attribute of a competitive market. If so, the challenge is to ensure interoperability across portals, with no entity capable of leveraging its position as either a platform portal or technology provider to dictate how a vendor presents its offering. The report offers no indication of the technical difficulty this entails nor assurance that the range of alternatives will be aired and opportunities provided to participate in its design and operation.

## **The Report's Analysis and Implementation Plan**

Beyond the ambiguity of the legislative recommendations, the report glances across core mission requirements that need examination as to Section 846. The report does not address how the current structure actually responds to agency requirements for product precision, integrity, specialized handling and value focused services and if so, can or should it transition to the Section 846 model. COTS provisioning by the healthcare sector profiles how these values contribute tangibly to mission quality. When, where and how a product is delivered and how it is maintained throughout the supply chain is vital to an individual patient's well-being and overall quality of care and safety of a facility. We appreciate that Section 846(c)(2)(B) calls out for these risks of disruption to be examined, and urge GSA to consider products/product lines with particular health, safety, and/or security concerns, and in particular products that are used in the treatment of patients, not suitable for online purchasing and to exempt them from the Procurement through Commercial E-Commerce Portals program.

Commercial and government purchasers of industrial products also frequently require comprehensive and up-to-date technical specifications. Mission success relies upon the certainty that the products purchased are authentic, meet exactness standards and are sourced from authorized distributors/sellers, a responsibility, widely recognized, at which third-party marketplaces often fail.

GSA's report indicates its intention to seek only agency input to determine the products and product categories suitable for purchase on an e-commerce portal. Agency views are critical yet so is the public's, particularly those with experience in providing product. Industry insight on product selection and mix to ensure that the platform is successful and policy goals are met would contribute depth to decision quality. An effective Section 846 plan should develop and publish criteria upon which such determinations will be made, seek public and user agency input and consider those recommendations.

Also not referenced are core challenges associated with fair access to the e-commerce platform integral to competition and opportunity. Fees charged by the portal provider(s) must be transparent to all parties and the public and commensurate with the value provided and function performed. The substantial COTS market across the federal government has many interests competing and vying for business. The fee structure typical of the E-Marketplace Model diverges profoundly from the federal government market and, if applied, would distort fair cost allocation. E-Marketplace Model providers often charge sellers a percentage of the value of their goods (sometimes as high as 15%) to sell their products. Such a structure ignores the significant economies of scale and other efficiencies associated with a government e-commerce platform and should benefit the sellers using it. Otherwise, the portal provider will succeed to a windfall that reduces government choice and competitive opportunity. The report's failure to address the need for scrutiny and analysis as to fees must be remedied by debate and deliberation on the specifics fees, rather than assurances of further discussion.

Since Section 846's enactment, the need to ensure the protection of sensitive government information and vendor proprietary, market protected information has heightened. Secure e-commerce portals are fundamental to national security and the integrity of government processes. It is also crucial to fair and competitive markets. Section 846's mandate that proprietary information of third party suppliers be protected requires review and debate regarding how GSA proposes to do so. Yet the report references it only in passing.

The failing is not in presenting solutions to these difficult and complicated challenges within the 90 days provided to prepare the report. While GSA has committed to further discussions in Phase 2, specific proposals should be presented to afford agencies and the public a role in understanding the underlying rationale and to participate in its decisions. The analysis and reasoning historically accompanying government action affecting so extensively the public and private sector has yet to be engaged.

*April 17, 2018*

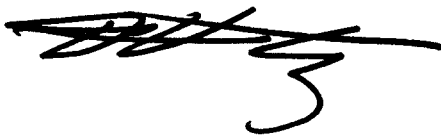
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## **Conclusion**

NAW urges you to give a close examination to GSA's proposed amendments through the committee referrals, hearings, mark-ups and votes which comprise the legislative process, and ensure opportunities for agencies and the public to participate meaningfully throughout the process by which Section 846 is implemented. Without analysis, clarity and justification, the proposal to raise the micro-purchase threshold should be rejected and the other amendments should await further detail.

Thank you for your consideration of NAW's views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dirk Van Dongen', with a stylized flourish at the end.

Dirk Van Dongen  
President

cc: Members of the Committee on Armed Services, U.S. House of Representatives  
Members of the Committee on Armed Services, United States Senate  
Members of the Committee on Oversight & Government Reform, U.S. House of Representatives  
Members of the Committee on Homeland Security & Governmental Affairs, United States Senate  
Members of the Committee on Small Business, U.S. House of Representatives  
Members of the Committee on Small Business & Entrepreneurship, United States Senate  
The Hon. Mick Mulvaney, Director, Office of Management & Budget  
The Hon. Emily W. Murphy, Administrator, General Services Administration